

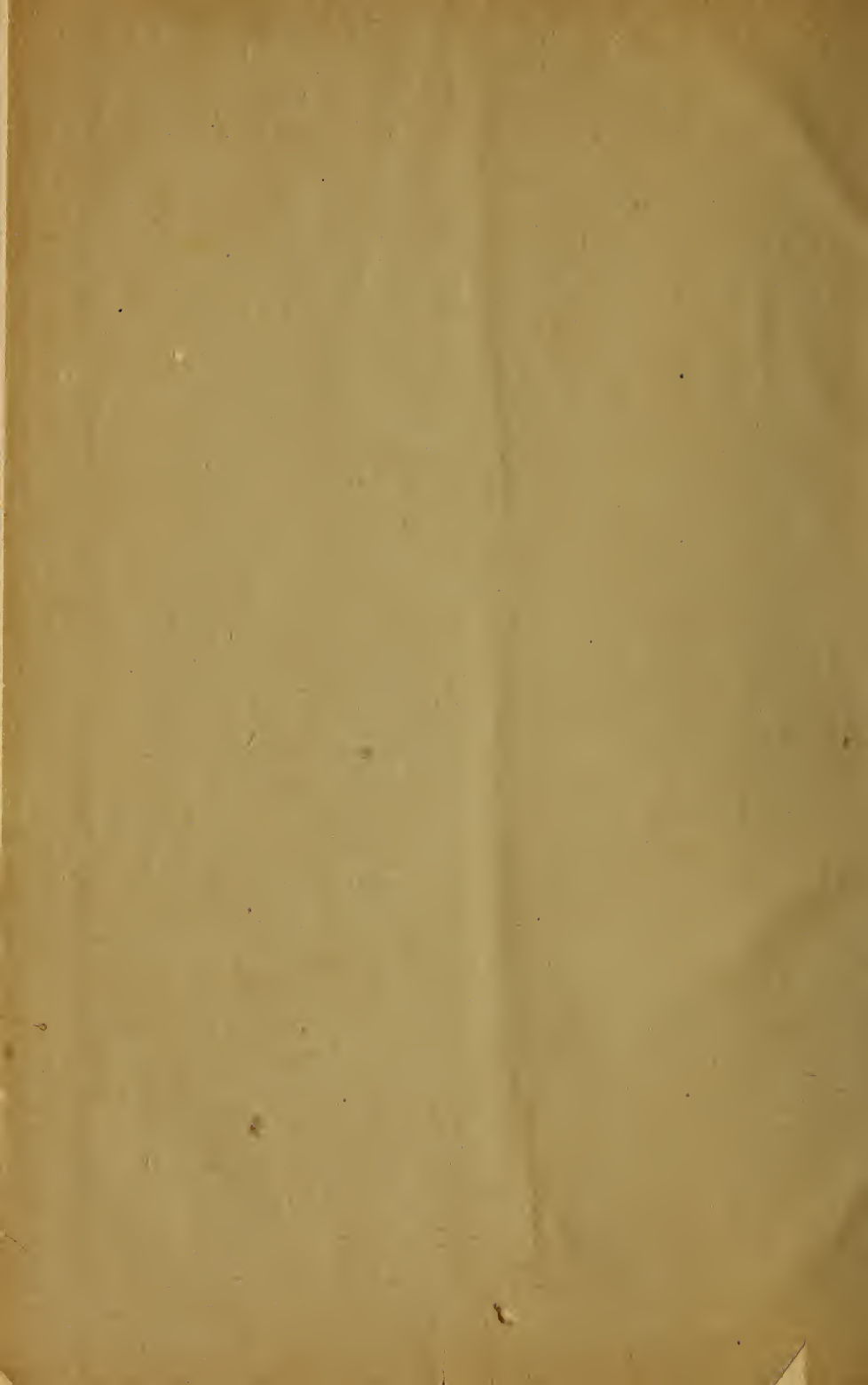
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MINISTERS ON TRIAL.

Was the Execution of Riel Necessary or Proper ?

MR. BLAKE'S GREAT JUDGMENTS,

DELIVERED IN THE HOUSE OF COMMONS OF CANADA,

ON THE

19th March, 1886.

Mr. BLAKE. I trust the hon. gentleman who has just sat down (Mr. Macintosh) will not impute to me any desire to depreciate the varied and versatile talents of which he has just given us an illustration, if I do not devote any considerable portion of the time for which I shall feel called on to trespass on the House, to a discussion of his speech. It was indeed a production which, if it were to be followed and discussed, would lead us tolerably far afield from the question we are now called upon to debate; and there is nothing I more admired than the apparent fervour and freshness and zeal with which the hon. gentleman in his peroration, denounced the propriety of dealing with dead issues, after he had commenced his speech, by laying before us an *olla podrida* not very savoury of ancient fancies and fictions, rather than facts, which he proposed should be discussed so as to prevent us from dealing with the very serious issue which is really before us. I have admired his skill and talent in several capacities. I have admired his skill in the making of printing contracts; I have admired his powers in the acquisition of railway subsidies; and I am to-day called on to admire his attainments in the profession of law, and

in the profession of medicine, as well as in that process of the collection of odds and ends of dead issues, which he began by telling us about, though he ended by denouncing their being raised. Now, Sir, the question before us belongs to that part of the administration of justice for which the Executive is responsible to Parliament. It is, in its nature, out of the ordinary scope of our enquiries. But I am glad to know that the Government has frankly recognized the proposition which I ventured a few weeks ago to suggest in public—that this particular case

**Comes fittingly within the scope
of our enquiry;**

that it is a proper thing, under the circumstances which have occurred, and in the condition of the question that it should be brought into parliament, and should be here debated and decided. There is, therefore, on this occasion, no necessity to engage in the consideration of what are the limitations under which we may properly intervene in Parliament with this portion of the administration of justice, because *both sides of the House appear to agree that this particular case does not fall within any rule which should*

prevent our interference, but rather that its nature is such as imperatively demands our interference; and, for my part, I should have thought it a humiliation to the Parliament of Canada if—in the circumstances which preceded, which attended, and which have followed the event round which the interest of this debate centres—it should have been argued by any responsible statesman, that it was in this Chamber, and in this Chamber only, that there should not be free discussion, and a decision after that discussion, upon the conduct of the Administration. But while this is the case, and while I for my part do not desire to complicate the particular issue which is raised with any other issue not necessary to be considered in order to its determination, I am not equally able to compliment the Administration upon the mode in which they—because I drop disguises, and say they—have brought this question forward, and have insisted that it shall be debated. I entirely agree that, while the case is one for our consideration, the discussion is of a delicate character, dealing as it does with the administration of justice. It is a case in which I believe

We ought absolutely to eschew all spirit of partisanship.

in which we ought, as far as possible, to eliminate from our minds all spirit, even of party, and which we ought to approach as nearly as we may with the calmness, the dignity, and the impartiality of the judge. This is always a difficult task for a political body, and therefore a task rarely to be attempted—to be attempted only under that pressure of necessity which rests upon us today. But it is a task peculiarly difficult on the present occasion, because of those questions of race and creed which have been drawn into the discussion; because of the old offence, which has been made, rightly or wrongly, a part of the question under consideration; and because also of the question of the responsibility of the Government itself in connection with the outbreak which gave rise to the trial which resulted in the sentence which the

Government ordered to be executed. But, Sir, though I quite recognise the special difficulties which surround us in approaching this our task, in the spirit in which it ought to be approached, I conceive that the existence of those difficulties only makes the adoption of that spirit the more imperative, and that *our duty is, so far as the interests of truth and justice will allow, to say no word that may irritate, and as far as possible, to take a course which may heal old sores—and new sores too.*

I agree in the observation which was thrown out from the opposite side of the House the other day, as to the general tone and temper of the debate so far; and I hailed with extreme pleasure the courteous and kindly compliments which were paid to my hon. friend beside me (Mr. Laurier), by two of the Ministers, on his speech of the other evening. It is to my mind the crowning proof of French domination. My hon. friend, not contented with having for this long time, in his own tongue borne away the palm of parliamentary eloquence, has invaded ours; and in that tongue has pronounced a speech, which, in my humble judgment, merits this compliment, because it is the truth, that it was the finest parliamentary speech ever pronounced in the Parliament of Canada since Confederation. That speech has been complained of a little because it differed from the tone, it was said, of former speeches. Some things have been said upon it to which I may ask your permission to allude at a later date.

Now, Sir, the hon. member for Ottawa (Mr. Mackintosh), announcing in varied tones and at different intervals, the attitude of hon. gentlemen on this side of the House, with reference to this question, a little mistook it, and, I think without any justifiable cause for such mistake. I have the honor to occupy, however unworthily, the position of leader of the Liberal party; and with a full sense of the responsibility attaching to that position, I took at the earliest practicable moment, after my return to the country, the opportunity of declaring publicly, what I conceived ought to be and was the

attitude of that party towards this question. I have since enforced by argument on all occasions, the view that that was our true attitude; and I repeat to-day, in the presence of this Parliament, the declaration I then made, that upon this subject there has not been, nor is there intended to be, the slightest association of party in our ranks,—that of set purpose and in the belief that we shall so best discharge our duty to our country, we have agreed that each one of us shall, after listening to the arguments and coming to such conclusion as we can, vote as he conceives, entirely irrespective of party alliances, the interests of his country demand.

Some hon. MEMBERS. Hear, hear.

Mr. BLAKE. Hon. gentlemen opposite cheer derisively. I understand them perfectly; they cannot conceive of such an act. It is incredible to them that public men should so act, and I do not feel moved at all by their cheers, knowing as I do, from eighteen years' experience, their manner of conducting business. But what I say is true, for all that; and so, upon this occasion,

I must speak, not at all in my capacity of leader of a party, but as an individual for myself alone

The hon. member for Lincoln (Mr. Rykert), the other evening, very much complained that I had not been heard from earlier, and he also, with that vivid imagination which he shares with the hon. member for Ottawa (Mr. Mackintosh) made some statements with reference to my course in debates on important questions, which I might challenge if it were perhaps worth while. I had thought that I had expressed opinions which are recorded in the *Debates*, and of which I believe I have no cause to be ashamed, with reference to the Streams Bill, the Boundary Question, so far as that was at all a constitutional question, and the License Law. But it seems that the hon. member's diligence and researches have failed to recall to his recollection or to enable him to ascertain that I ever spoke on any of these topics. However that

may be, I never intended that this debate should close without my saying something upon this question; but, as I stated upon the occasion to which I refer, I desired to hear, being entirely uncommitted by any declaration or absolutely formed opinion, what was to be said on both sides of the question, and I have awaited, I think, a convenient time for the presentation of the case by those who have been assailing the Administration and by the Administration in its defence. I think we have the right to assume, at this period of the debate, that all the material positions which could be brought forward on the side of either of the contending parties have now been advanced. I awaited, I confess with some anxiety, to hear the legal adviser of the Government, who, I thought, might at an earlier period than this have enlightened us upon those portions of this important question which specially appertain to his duty, to his responsibility, and to his office. But when I saw, two or three nights ago, after the close of the speech made by the hon. member for Iberville (Mr. Béchard), though half a dozen Ministers or more, including the Minister of Justice and the Secretary of State, were in their places, that the Government declined to rise; when I saw their supporters calling "question;" when I saw the Government insisting upon Opposition members, or upon hon. gentlemen on this side, gentlemen who did not take the view that the Government took, following one another, and thus declining the debate; when I found my hon. friend from East Quebec (Mr. Laurier), obliged to rise after the hon. member for Iberville, and when I found, 24 or 48 hours afterwards, that still the Minister of Justice did not rise, I presumed he was not going to rise at all, or, at any rate, not until after he had heard some other speakers on this side. If therefore I shall be obliged to state some conclusions, to advance some opinions, which, after the further light that he may perhaps be able to throw upon this subject, I should have modified, I trust that the House will not suppose, at any rate,

after the taunt from the hon. member from Lincoln (Mr. Rykert), and after the course pursued by the Government so far with reference to the debate that I have indecently hurried my presentation of my humble self to this House. I have said that I believe that there are materials very important to a satisfactory discussion of this question, which materials the Government have not thought fit to bring before us. I do not intend to enlarge upon that topic, having had an opportunity of referring to it a day or two ago. I say we ought to have had an opportunity of seeing some of the papers which have been brought down and which we have not yet seen, because we know that unprinted papers are accessible to but few. For my part, I have not yet had the opportunity of seeing a single paper brought down by the Government so far, with the exception of the instructions to the Crown counsel of which I obtained a copy. There are important papers, so far as I am able to gather from statements made by the Minister when presenting from time to time those which he did bring down, which are not yet brought down, and some, as I shall show before I resume my seat, very important. I think the

Conduct of the Administration on the question of the production of papers

is blameable in the extreme. They use these papers as a fund upon which they can draw, so far as they think them advantageous to themselves in the conduct of the discussion; but such papers as they think do not tell in their favor, they hold back. Take the Minister of Militia. The other evening he thought it would help his argument with reference to the patriotism and disinterestedness of Riel, with reference to the degree of sympathy or the reverse which we ought to extend to him, to read a letter of Bishop Grandin. The Minister takes the letter out of his pocket, and he reads it. He thought it would help him to anticipate the encounter which I am sure we are looking forward to with

great interest, of the two military men, the hon. Minister of Militia and the hon. member for Bellechasse (Mr. Amyot); he thought it would do him a little good to bring down some correspondence in advance, and he read extracts of a lot of letters, and a couple of telegrams, which he says, were sent to him by the hon. member for Bellechasse, and he read them at a time when the hon. member for Bellechasse (Mr. Amyot), having already spoken, had no opportunity, according to the rules of the debate, of replying to him, and when they were but very little relevant to the question. Such was the course that the hon. Minister of Militia thought consistent with his duty to the House, with the dignity of his position that he thought consistent with the generosity which ought to prevail between political opponents. The Government select such papers as they think they can make a point on in the debate. These they bring down at the moment they want to use them, but the *mass of papers, on the perusal of which, if they had been placed in an accessible form before us, a proper general judgment could be reached, these they refuse to bring down.* They say they have no time to bring them down, that they have no time to do anything else but to debate this question from day to day, and have time only to bring down those papers which serve their own arguments. I said the other day, and I repeat, that in my opinion the whole question of the conduct of the Government, before the rebellion, and up to the outbreak, and the whole attitude and relation of the half-breeds and white settlers to the Government with reference to the various questions which have been agitated, are extremely material to the formation of a judgment upon this question. I do not say what the hon. the Minister of the Interior the other day misunderstood me as saying, that I thought we ought to debate them in the same debate on which we debate this question. I did not think so far a reason which is very obvious, for the reason that, even the debating of them, by themselves taking them altogether, involve a question so large in point

of time, in point of subject, in point of reference to documents, as to transcend the limits, the ordinary and reasonable limits of debate, while the question we have before us is one of quite sufficient magnitude and complication at any rate to involve a debate by itself. So far I quite agree, but what I said the other day, and what I reiterate, is that, notwithstanding that proposition as to the complexity and magnitude of the questions rendering it inconvenient that they should be debated together, it is none the less important to a sound decision upon this question that the other questions should be debated, and we are doing a wrong thing: we are

Putting the cart before the horse,

when we discuss first of all the final act in the great drama, instead of dealing in the first instance with those precedent facts and circumstances, threshing them out, sifting them, and endeavoring to reach a conclusion as to the relative responsibilities and attitudes of the Government of the country and of the people who rose. I say that we ought to know that in order that we may properly measure what the moral guilt was of those who rose, we ought to know it in order that we may properly measure what was the right of this Government to act as judge in this cause. And, therefore, Sir, I am of opinion that the course which the Government has decided and insisted upon being pursued in this matter is an inconvenient, an illogical, an unsatisfactory course. I think also that it must be thoroughly understood—and we may as well understand it now—that, if we are to put the cart before the horse, we shall have to deal with the horse a little later. I think it had better be understood that we are not debating in this motion, in the form in which it is insisted that the question shall be put, when we cannot call, if it were convenient to call, for a decision upon it, when we have not those materials to which I referred the other day, the obligation to submit which to us has been admitted by the Government but remains unperformed; that we are not now debating, still less deciding, that

great question, a question which is *the* question, Sir; for what we are debating to-day, however important it may be with reference to the considerations of sentiment and of feeling which have been raised about it, *that question is but an incident of the real question which is to be tried between the two sides of this House.*

And again, Sir, I am unable to compliment the Government upon the course which they have pursued in determining that, this question being brought forward now, the discussion, in its practical form and sense, should be limited, by their motion of the previous question. I am not hinting that we may not debate the main motion just as freely after the previous question is put as before—of course we may; but all the subjects which are involved in the main motion are questions which are properly to be debated, and some of them should have been brought forward in a manner in which the opinion of the House could be taken upon them in this connection; and the capacity to take the opinion of the House upon them in this connection being taken away from us by the proposal of the previous question, the Government has, as I conceive, exercised a very unwise discretion, and pursued a very needless course as well, in so dealing with the matter. I say a needless course, because I think it is pretty palpable to all of us that no possible amendment that could have been moved would have prevented us in the end from coming back upon the motion of the hon. member for Montmagny (Mr. Landry). I should myself deplore any attempt to evade a decision upon that precise question, but quite consistently with a decision upon that precise question being desirable, is this proposition also good that it is desirable that there should be decisions upon other questions as well. Therefore, Sir, upon these grounds, and notably on the ground to which I have referred a moment ago with reference to the papers, when we happily reach that stage in this debate at which our opinions are to be converted into votes, I shall myself vote against the proposition

that this question be now put, believing it is not fit that, at this time and under these circumstances that the question should be now put. I shall represent, I feel sure, though I do not know, I am quite satisfied I shall represent in that declaration the opinions of a minority—how small or how large a minority is of little consequence—the opinions of a minority, and therefore immediately afterwards we will come to the question itself, and coming to the question itself and recognising therefore the fact that with that question we shall have to deal, I propose to discuss now the method in which we should deal with it, as of course after that first vote there will be no opportunity for further discussion. Now, I could well understand and I believe that I could well justify this proposition—that under the circumstances to which I have briefly alluded, it would be fit further to emphasise one's view of the inexpediency,

The Impropriety, the Unfairness of the course

which the Government is pursuing by abstaining from voting either way upon the main motion. I can thoroughly understand the opinion of many people as being in favour of such a view, thus leaving the question to be debated at its proper time and under its proper circumstances; and I can understand also—as you will readily perceive—the opinion as existing in some minds that in the sum of this whole matter, though they may not be able wholly to agree with the view of the Government, they should yet think that it was not a case in which there were grounds for recording a censure upon the Government in regard to their action. I have already declared, on the occasion to which I have referred, that such conditions have existed in my knowledge, paying as I naturally do, some attention to the operation of criminal justice in the country, and I say that I can very well understand that some persons should reach that conclusion. It is not the view or course which I propose

to adopt. I have reached, for my own part, conclusions which seem to me to be so clear, which seem to me to be so well founded, which seem to me to be so important in the general interest of the administration of criminal justice, that I feel it my duty notwithstanding the disadvantages in which we are placed in coming to a conclusion, not to permit those disadvantages to deprive me of an opportunity which, perhaps, might not recur, of recording my vote or expressing my opinion. Now then, as I have said, it will be necessary that we should, before we can finally dispose of this question, though we are called upon to dispose of it now, it will yet be necessary that we should, before we can really and properly dispose of it, to thresh out the subject of the North-West affairs. I do not propose to enter into that discussion now, for the reasons which I have given. It is, perhaps, needless for me to do so, because I have already, at some considerable length, variously stated at from six to seven hours—I hope it was not quite seven, Mr. Speaker; I dare say you know better than any one of us—but I have stated in a speech which was but, after all, a chronological recital of the actions on the one side and of the other, my view upon the evidence which was then presented, of the relations of the Government to the North-West, to the white settlers, and to the half-breeds in the neighborhood of Prince Albert and elsewhere; and I have declared, and I think I have proved, that there were in those matters

Gross, Palpable, Incredible Delay, Neglect and Mismanagement.

I was struck the other night when my hon. friend from East Quebec (Mr. Laurier) in the course of another branch of his argument altogether, referred to the execution of Admiral Byng. I thought I recollected something of a historical parallel in another regard between those times and persons and these times and persons; and turning next morning to the book I had in my memory, Walpole's book on George II, I

found what happened at that time. At that time, too, Sir, there was a North American question with England; at that time there was a French question in North America; and just at that time the annalist of the reign of George II, records, with reference to the Secretary of the Southern Department, the Minister of the Interior of that day, the Duke of Newcastle, that Duke who, when he was told, as I said a while ago in this House, that Annapolis must be defended, said, "Oh, yes, of course; Annapolis must be defended; certainly. Where—where is Annapolis?" Of that same Minister, the annalist records, that what facilitated the enterprises of the French was the extreme ignorance in which the English court had kept themselves of the affairs of America. "*It would not be credited,*" says the annalist, "*what reams of paper, representations, memorials and petitions from that part of the world lay mouldering and unopened in his office.*" And turning a few pages on to the other event which had called my attention to the subject, I find the account of this same Minister with reference to Byng, that when a deputation waited on him shortly before the trial to make representation against the Admiral, he answered: "*Oh, indeed, he shall be tried immediately, he shall be hanged directly.*" So you see, Sir, there are very curious parallels between past and present times. Now, Sir, I have held, and I hold this Government responsible for every dollar of the public and private treasure which has been expended, for every pang that has been inflicted, for every life that has been lost, whether on the field or on the scaffold in the North-West, and I believe that for this, their responsibility, they will be called to a strict and stern account, here first, and afterwards at the great tribunal, so soon as they, who so boldly challenge us to come on, choose to bring forward those papers which they hold—I do not know whether they be mouldering or unopened—but which, in some way or other, they hold within their vaults.

The Guilt of the Insurgents.

Now, with reference to the insurgents, of course there was legal guilt—of course, rebellion, the old saying is, is always treason until it becomes revolution. *The degree of moral guilt is not a question for the jury at all; it is a question to be considered when you come to award the punishment. It does not effect in the slightest degree either the verdict of the jury or the sentence of the court.* Riel was legally guilty, no matter how great, and pressing, and long endured the grievances may have been; no matter how strong the case may have been, *Riel was legally guilty: no matter what the moral justification or the moral palliation or excuse may have been,* Riel, and those who rose with him, were legally guilty of the crime of treason, *if they were mentally responsible.* The Crown in the course of this trial, stopped the evidence about the grievances, and they stopped it—I make no complaint of their conduct—they stopped it rightly, because it was no defence at law, because it was utterly impossible, as the Crown counsel observed, that the court which sits under the authority of this Parliament and of this Government, could permit evidence to be taken to show that treason or rebellion against this Government was a justifiable thing. There was then, Sir, upon this trial before the jury, complicity with and a lead in the insurrection being abundantly proved, and in fact practically admitted, the single question whether the prisoner should be found guilty, or whether he should be found not guilty, on the ground of insanity. Now, before dealing with that question, I wish to refer to some only of the incidents connected with the trial, and I regret that the course of this debate has somewhat lessened in one or two respects the favorable impression which I had derived and had pleasure in expressing on a former occasion. I have myself expressed—and I had hoped, and hope now that what I said, though not said here, might have been thought, perhaps, not wholly unworthy of some observations—I have expressed my regret at

the Choice of the Judge,

in this case. I have pointed out there were some difficulties in relation to any judge who might be appointed under the existing circumstances; that in the first place these stipendiary magistrates, in the North-West, were, in truth, inferior magistrates. They are not magistrates—I desire to speak of them with all due respect—but confessedly they are not magistrates in any sense of that weight, dignity, authority and standing which belong to those magistrates, who, under the laws of the older Provinces of the Dominion, are entrusted with the trial of capital offences. I have pointed out, besides, that these judges are political officers, as members of the North-West Council, of that very North-West Council which, shortly after these trials, thought it within the sphere of its duty to pronounce an opinion—first of all, upon the conduct of the Government with reference to the transaction of its business, that portion of its business the neglect of which led to the insurrection or gave the opportunity for the insurrection; and secondly, to pass an opinion upon the course which ought to have been, or the course which was pursued by the Government with reference to the execution of this very sentence. I have pointed out also that the standing of those officers in another important respect is inferior to that which ought to be the standing of men entrusted with such issues, in this: *That they are not officers holding their office during good behaviour; they are officers holding office practically during pleasure.* The security which grows from the entire independence of the judges of the Executive Government, does not subsist in this case, and the fact that it does not subsist has been emphasized by this Government, which in a well known case has removed one of those stipendiary magistrates from office. So that, not merely in theory, but *in practice has the lesson been taught that these judges are under the control of this Government.* Those difficulties in my opinion should have been removed by legislation. I

do not think that Parliament as a whole, whatever the Administration may have done, really contemplated that trials for high treason or treason felony should take place before those magistrates. I do not suppose that in what we thought was happy, peaceful and contented Canada there was anyone who thought of the possibility of a trial for high treason or treason felony. Speaking for myself I say it never occurred to me that we should have such a trial last year or any year in our country; and I therefore say that I fancy it must have been upon that view very largely that the legislation which was passed by the late Government and which was amended by the present Government in a direction which diminished to some extent the securities for the prisoner was passed. You may say these are but theoretical difficulties after all. I say, no. I say they are serious practical difficulties. They are intensely practical. I have already said elsewhere that the question is not simply of the actual fairness of the trial. *It is of the last consequence that the public should retain all the securities which constitutional government and parliamentary government have wrested from the prerogative and that there should be in the minds of the public a certain conviction that those securities exist and are available.* This is not a new question with us. Its spirit is exhibited in our Statute Book, in the Act which constitutes the Supreme Court, by which it is expressly provided that the judges of that court shall not be competent to accept any commission or employment, of emolument under the Government of the day. In the Consolidated Statutes of Lower Canada, an express prohibition of a similar character exists, and was brought into play, we recollect, not so many years ago, by our lamented friend, Mr. Holton, and that in connection with a North-West matter too, when a learned judge of the Superior Court of the Province of Quebec had been appointed administrator of the Government of the Province of Manitoba. This statute precluded the taking effect of that appoint-

ment. And how did this take place? How was it that the law was engrafted on the Statute Book? Because it had been found of practical consequence to the people of the Province of Quebec that it should be so. There also, as we know, there has been an agitation against grievances of many years' standing, which culminated in the rebellion of 1837; and for a great many years this question was one of the questions agitating the people of that Province. You will find that as early as 1825, the resolutions of the Legislative Assembly of Lower Canada, declared as follows:—

"That for the more upright and impartial administration of justice it is expedient to render the judges of His Majesty's Court of King's Bench and Provincial Courts more independent than hitherto by incapacitating the said judges from seats in the Executive and Legislative Councils, and disqualifying such as have now seats therein from sitting or voting in such Councils.

"That it is expedient to secure by law to the said judges their respective offices during good behaviour in the same manner as those officers are secured in England.

"That it will be expedient for the aforesaid to secure adequate permanent salaries to the said judges on their being prevented from holding any other office of profit or emolument under the Crown."

It is not, Sir, in the heyday of liberty that we are to forget the securities for freedom. The price—according to a hackneyed but ever-to-be-remembered maxim—the price of liberty is eternal vigilance; and in this regard, as I have said, an error has been committed. Now, what is the measure and extent to which this Administration is chargeable in this respect? Certainly not in the existing state of the law with reference to a trial before one of the stipendiary magistrates. All that can be complained of fairly against them is, that their attention being called to the special circumstances of the case, to the unprecedented and unanticipated circumstances, during the late Session of Parliament, by the hon. member for Beauharnois (Mr. Bergeron), and the suggestion being made that legislation should take place, they declined to accede to the suggestion, and

insisted that the trial should go on under the existing laws. Sir, I have said that trials of this description differ altogether from all other classes of trial in respect to the importance of the independence of the judiciary.

Relation of the Government to trials for treason.

They differ wholly, because in trials of this description there is hardly a conceivable case in modern times, at any rate, in which the Government does not occupy a wholly different relation to the prosecution from that which it occupies in all ordinary cases in the administration of criminal justice. There can be no question, for example, of the Government being otherwise than an impartial and equal administrator of the law if John Jones or Tom Smith is taken up and accused of having picked somebody's pocket, or robbed somebody's barn, or maimed somebody, or killed somebody. But cases of this description wholly differ. In this case the Government may be, generally is, in this particular case unquestionably was—a prosecutor in altogether a different sense and with altogether different relations to the prisoners than in those other cases. I point out—for I desire through this discussion to sustain myself by authority—what authority says upon this topic. I refer to the well-known book of Lieber on Civil Liberty, when he uses these words:

*"In the trial of treason the Government is no longer theoretically the prosecuting party, as it may be said it is in the case of theft or assault, but the Government is the really offended, irritated party, endowed at the same time with all the force of the Government to annoy, prosecute and often to crush. Governments have therefore been most tenacious in retaining whatever power they could in the trial for treason; and on the other hand, it is most important for the free citizen that in the trial for treason he should not only enjoy the common protection of a sound penal trial: but far greater protection. * * * The trial for treason is a gauge of liberty. Tell us how they try people for treason and we will tell you whether they are free."*

"It redounds to the glory of England

that attention was directed to this subject from early times, and that guarantees were granted to the prisoners indicted for treason centuries before they were allowed to the person suspected of a common offence. *

* * *Experience proves that not only are all the guarantees of a fair penal trial peculiarly necessary for a fair trial in treason, but that it requires additional safeguards; and of one or the other the following seem to me the most important.*

"The judges must not depend on the Executive." * * *

"The judges must not be political bodies." * * *

Many safeguards are specified, of which I select the two that are opposite to the present case: "The judges must not depend on the Executive; the judges must not be political bodies." Now, Sir being in the difficulty that in these particular trials the Government, under the standing laws which they did not choose to propose to alter, had to select a judge who was dependent on the Executive—a judge who was one of a political body, it was

Eminently incumbent on them to have made the best selection.

the one which was least objectionable, the one in respect of which it might be said, though there is a difficulty as to all to which I have adverted, this one is certainly the least, or at any rate not the most obnoxious. But what I have objected to on a former occasion, an objection which I renew to-night, is the choice of the particular judge, because this particular judge, as you will see if you refer to the Public Accounts, was the recipient of special favors, the occupant of special relations to the Executive of the day. In the first place, he is the legal adviser to the Executive of the North-West; he is so appointed during the pleasure of the Government; he is so paid a salary during the pleasure of the Government. He answers to the Attorney-General, the legal adviser of the Government in the North-West Territories; and it needs not to enlarge upon the relations and responsibilities of a Lieutenant-Governor of the North-West Territories to a rebellion in the North-West, and upon the relations and responsibilities of the First Minister

of Canada, who declared that he was the medium of communication between the two Governments and of the Minister of the Interior towards the Lieutenant-Governor of the North-West Territories to show that it was an unhappy choice to select out of the three or four judges, the very person who filled the position of the political adviser, the political law officer, to the Government in the Territories to be the judge in this particular trial. He is also the recipient of special favors. I find, in the Auditor-General's Report, just brought down, a statement of his accounts. I find that, irrespective of his salary of \$3,000 a year, there has been paid to him, during the year to which these accounts refer, a special rental allowance of \$500, an additional salary as legal adviser to the Lieutenant-Governor of \$200, three votes of \$200 each as a nominative member of the North-West Council, his travelling allowance of \$1,000, and something between \$400 and \$500 for expenses and allowances for attendance at Ottawa in connection, it is said, with the Torrens' Act; making a total of over \$2,700 paid during the last year to this judge, in addition to his salary of \$3,000. Now, as to travelling allowances, and allowances as nominative members of the North-West Council, the other judges were in the same position; but the allowances for house rent and as legal adviser and in connection with the Torrens' Act are peculiar to the particular officer whom the Government, I think, extremely unfortunately, decided they would entrust with the duty of conducting these trials. Well, the judge chooses

The Jury Panel,

and we have heard from the hon. member for Bellechasse (Mr. Amyot) a statement, which I think is of considerable importance, and with reference to which I should have desired to hear something from the Government before now—a statement to the effect that there were persons of the faith and nationality of the prisoner eligible as jurymen, but that none or only one such was chosen of the panel. I heard the hon. member for

Montreal Centre (Mr. Curran) say that no objection of that description could apply, in consequence of the relations of the prisoner at the time of his trial to the church of his fathers and the church to which he himself belongs, but I do not think that argument holds; and, for my part I must express my regret that, if the circumstances be as up to this moment they appear to be from the uncontradicted statement of the hon. member for Bellechasse (Mr. Amyot), a wider selection should not have been made of the panel; and I share the regret expressed by several hon. members that the single person who happened to be on the jury, of that faith, should have been peremptorily challenged. For that challenge there may have been, for all I know, a good reason; but we are not told, and we must not presume it was a challenge for cause. We all know the shock to the administration of justice which ensued when those of his faith were challenged on the occasion of the O'Connell trial. That ought to have been a lesson on this occasion, and the same difficulty ought not to have recurred in our day. Again, with reference to

The character of the prosecution.

The written instructions which were given to the Crown lawyers were to try all the leaders, with the exception of certain Indians and others who might be chargeable with murder—to try all the leaders for treason. No distinction whatever was made in those instructions between Louis Riel and the other leaders. Now, how did it happen under these circumstances, that all the prisoners, except Louis Riel, were indicted—for the same offence, is true, but under the more modern statute and procedure, for treason-felony, while Riel alone was tried for high treason under the ancient law. Were there special instructions given which have not been brought down to us, or special verbal instructions or communications differing from the general instructions which have been brought down to us, as the only instructions

given to the officers? If there were none such, I consider it to have been a violation of those instructions to try for treason-felony the mass of the leaders, and for high treason, one. They were all ordered to be tried for treason, and they all ought to have been tried under the same statute, unless special instructions were given to the contrary. It was, of course, with the cognisance of the Government that this difference was made, because it was everybody's news—it was reported in the papers; and, therefore, I assume that the Government either instructed, in the first instance, or else acquiesced in the course pursued; and I am entitled to assume that because I observe still further that the Deputy Minister of Justice was one of the officers associated with the others in the conduct of the trial.

As to the time,

I agree with the observations that have been made, that it seems to have been short; but I am not prepared, in the present state of the evidence, to maintain that it was too short, simply because I have been unable to observe any protest on the part of the prisoner's counsel that it was too short, excepting in so far as such protest may be implied from their having asked for a longer time than the Crown counsel granted. Upon that subject, I think we might have some further information.

I was glad to be able to make an observation, which has been referred to before in this debate, as to the assistance given by the Crown in procuring

The Prisoner's Witnesses.

That observation can no longer be repeated in its full force, because I have learned, since this debate commenced, the course which was pursued with reference to the request for witnesses. In my view, it was of the highest consequence, and in saying that I do not overlook the letter which the hon. member for Montreal Centre (Mr. Curran) read, that Dr. Howard should have been called. I do not, after the statement of that hon.

member, charge his not being procured upon the counsel for the Crown, because the hon. gentleman read a letter addressed to Dr. Howard from the Department of Justice here, from which it appeared that negotiations had been going on between the Department of Justice and Dr. Howard as to the terms upon which that gentleman would visit Regina; that he had named, under the special circumstances which the hon. gentleman mentioned, the sum of \$500; and that it was upon the question of that charge that the Department of Justice declined to arrange for Dr. Howard going up to Regina. Now, Sir, I regret that decision. I think it extremely unfortunate that Dr. Howard—who, besides being a well-known alienist, also had charge of Riel for, as well as I could gather, a period of nine months in the asylum over which he presided—was not a witness at the trial, and that we have not now the benefit of his evidence. I do not think any such question as the difference between what might have been supposed to be his reasonable charge and the sum of \$500 ought to have weighed for an instant in considering the question whether he should have been available or not. Then, Sir, I think it is unfortunate that we do not know more with reference to the

Complicity and responsibility of the Whites

in the rebellion. We remember the speech of the First Minister, last Session, in which he declared that it was not to the Indians or to the half-breeds, but to the whites of Prince Albert, that we owed the shame, the disgrace and the discredit of the rebellion. We find the law officer of the Government pointing out the same proposition, not as positively, but still with a tolerable degree of certainty, to the counsel he was sending there, and instructing them that no point was more important than that they should secure evidence and convict those who were guilty in this regard. We hear from the Minister of Justice that reports have been

received from the law officers of the Crown on all these points; we know the beggarly kind of attempt made to mete out justice to these guiltier whites. We know that two only were committed for trial, for the Minister of Justice has told us so; we know that one was Jackson, of whom the Secretary of State, with that liveliness of imagination which characterizes his oratory, told his constituents at Terrebonne that he was a Frenchman in all but the name, that he was *Francisé*, that he was just as much a Frenchman as Regnier, and there was no question of nationality about it.

Mr. CHAPLEAU. I did not.

Mr. BLAKE. Oh! well, we will verify as we go. Here is a report in *La Minerve* of the hon. gentleman's speech:

Une VOIX. Vous avez bien gracié l'Anglais Jackson, pourquoi ne pas avoir gracié Riel? Jackson, messieurs, ce qu'on a dit et écrit au sujet du pardon de Jackson, était, laissez-moi employer ce mot, une grosse bêtise. D'abord, Jackson n'est pas plus Anglais que vous et moi. Il n'avait d'Anglais que le nom, et il était aussi Français par le sang et le langage que Riel lui-même. Il rassemblait en cela à beaucoup de nos compatriotes d'origine anglaise ou écossaise, mais qui sont complètement *francisés*. Jackson était l'un des secrétaires de Riel; il a eu le sort de Régnier, son compagnon, un Canadien de nom et d'origine.

And then the hon. gentlemen proceeds to say;

"Ils ont été graciés tous deux comme complices au second degré, de sorte que la question de race n'a eu rien à faire dans leur cas."

That was the hon. gentleman's statement by the revised report of the hon. gentleman's speech in the *Minerve*.

Mr. CHAPLEAU. It was not my statement. The hon. gentleman who corrects the *Hansard* here should allow other people to correct reports in other papers.

Mr. BLAKE. I do allow it to be corrected. So this is the account of the trial of Jackson, who, I admit, was an Englishman, contrary to the incorrect report of the gentleman's speech, which, some wicked adversary, with intent to get him into a corner and injure him

politically, has foisted into that well known hostile paper to him, the *Minerve*. I leave the responsibility to him and the hon. member for Ottawa (Mr. Tassé) of settling with the reporter, and I hope the hon. gentleman will not blame me if I have chosen the report from that paper which has given ostensibly, in the first person, a verbatim report of his speech.

MR. CHAPLEAU. I blame the hon. gentleman for not accepting the statement of one of his colleagues in the House.

MR. BLAKE. I said I hoped he would not blame me for having taken the report. With reference to Jackson, we know well the circumstances in his case. We know that he had joined Riel at an early period, and that he is said to have become a lunatic and was acquitted on the ground of insanity. The other person was one Scott, of whom we have not equal particulars, but of whom the Minister of Justice reports to us the result of the trial, saying he was found "not guilty"; and I think having read that in the instructions to the law officers and hearing the Government declare that the persons principally guilty were the whites of Prince Albert, it would be important to us in measuring out the degree of lenity or severity that was due to Riel, to have heard something more of the result of this search by the Government against their white enemies.

Statement of the real issue before Regina Jury.

I pass, although there are other points to which I might refer, to the issue which I have said was for the jury to decide on that occasion, and that issue was, not whether Riel was insane in the sense in which, in common parlance, we use that word, but whether he was insane in the sense in which the word is so used that it may create irresponsibility for crimes. By our law, whether that law be right or wrong, *he might be insane in the sense in which we ordinarily use the word, and yet criminally responsible*; and the question for the jury was, in fact, whether he was so insane as, within the meaning of the law,

to be irresponsible for his acts. This is a difficult question, as are all questions of insanity, and it may be divided into two headings: First, what was the effect if his conduct were genuine? And next, was it genuine or feigned? Now, I want, to fasten if I can, upon your mind, the question for the jury. I want you to remember that the question for the jury was whether he was insane within the meaning which the law attaches to that term, so as to induce the consequence of irresponsibility for crime, because it must be always remembered, as the vital question, as *the vital point, that without disturbing in the slightest degree the finding of the jury, there may remain, and generally will remain, under circumstances like these, important considerations as affecting the moral guilt, and therefore, as affecting the degree of punishment to be awarded to the prisoner*. The verdict then of guilty would be right, first of all, no matter how great were the faults of the Government, no matter how clearly political was the offence, no matter how great the grievances, no matter how long-enduring and long-suffering the people might have been, the verdict of guilty would be right, no matter how these things might have been, and also the verdict of guilty would be right, no matter how clearly Riel's intellect were disordered, if it were not disordered up to a certain point; and these two things, the question of the political character of the offence and the resultant considerations, and the question of the disorder of intellect, would fail to be considered, consistently with not disturbing in the least the verdict of guilty by the jury, in the award of punishment. Now I shall make good after a little while by authorities those two propositions; but before touching the facts as to the mental condition of this individual, it may be as well to look for a moment at

The general knowledge on the subject and the principles of enquiry.

There is an old controversy between the lawyers and the doctors upon this head, the doctors widening the degree of

irresponsibility due to disordered intellect, and the lawyers narrowing it. Both extremes were, I humbly venture to think, perhaps wrong, and I believe that these extremes are somewhat meeting now. I believe that many eminent men in the medical profession in these modern days have come round to the view that there may consist with a decidedly disordered intellect a measurable responsibility for crime, and that on the other hand the lawyers have come round largely to the view that the old and, what I may call in the main, the barbarous dispositions of the law, ought no longer to be considered as governing the case of insanity. But we have not to do, in the disposing of this matter, with the law as we would like it to be, or as we think it ought to be, or as we may hope it is going to be. It would be unjust entirely to try the Administration, or the judge, or to consider of the case on any such footing. *We have to ascertain, if we can, what the law is, as applicable to the case and then see how the facts fit into it.* Upon this question of insanity, so much has been said abroad and within this House utterly inconsistent, as I understand them, with the settled facts, that I desire, besides alluding to authorities which were quoted on the trial, and to the authorities which my hon. friend who spoke on that subject quoted, to refer to a very few passages from books. I have heard two hon. gentlemen speak of homicidal mania, as if we had anything very specially to do with that here, and point to the fact that the homicidal maniac acts without accomplices, and that because Riel had accomplices, therefore he could not be a homicidal maniac. I have heard an hon. gentleman this afternoon illustrating this subject by reference to the description of idiocy, by reference to the description of imbecility, by reference to the description of dementia. Now, however much those descriptions may apply to many very respectable persons who entertain, and even to some who express, opinions on this subject, they certainly have nothing to do with the peculiar kind of insanity with which

we are dealing. Now, Sir, the eminent French writer Georget, who is quoted by Browne in his work, says :

"In conversing with patients on subjects foreign to their morbid delusions, you will generally find no difference between them and other people. They not only deal in commonplace notions, but are capable of appreciating new facts and trains of reasoning. *Still more they retain their sense of good and evil, right and wrong, and of social usages* to such a degree that whenever they forget their moral sufferings and delusions, they conduct themselves in their meetings as they otherwise would have done, enquiring, with interest, for one another's health, and maintaining the ordinary observances of society."

* * * * *

"Those who conduct themselves so well in the asylum, in the midst of strangers with whom they have no relations, and against whom they have conceived no prejudice or cause of complaint, and in quiet submission to the rules of the house, are no sooner at liberty in the bosom of their families, than their conduct becomes unsupportable; they are irritated by the slightest contradiction, abusing and threatening those who address the slightest observation to them, and working themselves up to the most intolerable excesses."

Clouston, who had charge of the Morning-side Asylum, a very well known institution at Edinburgh, in his lectures on the matter, says :

"But to return to D. M., who may be taken as a typical case of monomania of grandeur, his mind is not only affected with the delusion that he is king, but *it is affected by an unreal tendency to elevation in all directions, and it is now somewhat enfeebled, as is commonly the case, after many years in such cases.* He often writes me long rambling letters proposing various impractical modes of managing the asylum, and he is the greatest fault finder in it. Then affectively, he is different from a sane man, showing small love for his wife and children, and he takes morbid dislikes to people without real cause. * * * He is of course very inconsistent to work as a blacksmith, he being a king; but the conduct of by far the majority of the insane is quite inconsistent with their beliefs; and then, if he did not work he would get no tobacco, or beer to lunch, arguments that even royalty can appreciate."

Again he says :

"I have a 'prophet of the Lord,' D. O. B.,

a joiner who by no means at our disposal can be got to work at his trade. He says that the Lord has sent him a new work and he must follow it. He sees visions from God all the time, which he puts down on paper, &c., &c.

"I have another man, D. O. C., with almost precisely the same delusion, viz., that he is a 'man of God,' who is a capital worker in the garden, and enjoys a dance or concert immensely."

Then, referring to a number of the others of the inmates of the asylum, he says ;

"Here is Jesus Christ, and here are the prophet Elias, the Emperor of the Universe, the Universal Empress, Empress of Turkey, the only daughter of God Almighty, Queen Elizabeth, four kings of England, one King of Scotland, the Duke of Kilmarnock, the inventor of perpetual motion, a man who has discovered the new elixir of life that can cure delusions, 12 persons to whom this establishment and all that it contains belongs, a lady who daily and nightly has delightful conversations with the Prince of Wales and the rest of the royal family, &c., &c. Those are all calm and harmless people, bearing themselves in their deportment and manner as becomes such distinguished persons, though a few do not exhibit any outward or muscular indications of their greatness, all are some way inconsistent and absolutely unmoved by the most conclusive argument or evidence that their ideas are wrong or unfounded."

In the report of the Commission on Capital Punishment, which sat in 1865, the very eminent physician, Dr. Tuke, being examined, gave the following answers to questions :—

"Q.—I believe that the knowledge of right and wrong is by no means uncommon among persons who are decidedly insane? A.—It is the normal state for them to have such knowledge.

"Q.—I suppose that in lunatic asylums you find a consciousness between right and wrong ; that is to say, obedience to the rules which you lay down? A.—Except in cases of absolute idiocy or dementia, the knowledge of right and wrong is intact."

Then with reference to the border line, Clouston says on the subject of delusional insanity :—

"There are plenty of persons doing their work in the world well and getting through their labor under monomania of pride or suspicion in a mild form. The now famous case of Mr. Wyld who held an important

government office and did his work well all his life, and yet had labored under the delusion of grandeur, that he was the son of George IV, and left all his money to the town of Brighton, because that monarch had been fond of that place, is one in point. He was held to be sane in everything he did but his will making. I am constantly consulted by their friends about the insane delusions of persons who do not show them to anybody but their near relations, and continue to do their work and occupy responsible positions. I now know in Scotland lawyers, doctors, clergymen, business men and workmen who labor under undoubted delusional insanity, and yet do their work as well as if they had been quite sane."

The latest work I have been able to see on this subject is that of Dr. Ireland, published last year, called "The Blot upon the Brain ;" and he says this :

"Thus between the soundest intelligence and the most disordered there are differences our vague adjectives will not define. People mad enough to be shut up in asylums are not so rare—say one in every 500 in highly civilized countries. Then again, people with a less dangerous or intractable degree of insanity are very common. Every man skilled in the symptoms of lunacy knows this. * * * In the world's history, men somewhat deranged in mind have had a great influence ; but to effect this their delusions must harmonize with the delusions of the multitude. * * *"

"The history of religious imposture^{re} show how powerful may be the

Influence of the insane upon the sane.

If disposed to enlarge upon such a subject, we might show the characteristics of some of the founders of the wild sects which sprang into being during the period of the Reformation, from John of Leyden to Venner. Towards the end of the last century, Mr. Richard Brothers, of whose insanity there can be no question, infected some educated people, and many of the vulgar, with his claims to be an inspired prophet. Mr. Halhead, a well-known Orientalist, and member of Parliament, was one of his followers. There are people still living who knew Joanna Southcote, who was when 60 years of age, to give birth to the Messiah, and who was said to have had 100,000 followers. In 1838 John Nicholl Thom collected a number of followers among the ignorant rustics of Kent, and killed a constable who came to

apprehend him: After this he persuaded his dupes to face the military, under the assurance that he would make them invulnerable. Thom killed with a pistol the officer of a detachment which came to arrest him, and was instantly shot dead, with nine of his credulous followers, by the soldiers. It was even believed that he would rise again within a month."

I read this—partly to meet what I conceive to be the erroneous argument stated in the report of Sir Alexander Campbell, in which he argues the impossibility of Riel having been seriously affected in his mind, because he could not have done what he did do, and had the followers he had, and pursued the career in that respect that he did, unless he were sane. Then, Sir, we come to

The question of the legal view of insanity and of responsibility as affected thereby,

and here again I trouble the House with what I conceive to be the best records of the expounded law upon the subject. Amos, in his work, says:

"Insanity, in the largest sense of the term as used for legal purposes, is a temporary or permanent disorder of the relations between the mental and physical functions of man, of such a nature as to destroy the value of the current, presumptions, founded on those relations, as existing in a condition of health."

The other quotations which I make are from Sir James Fitzjames Stephen, the well known criminal lawyer, who has devoted, I suppose, more attention to the principle and theory, and the practical operation of the criminal law, than any, or, at any rate, most, other modern criminal lawyers, who has been practically engaged in the attempt at codification, and whose knowledge and position have been recognized by his appointment to the judiciary, subsequently to which he became a member of the latest commission upon this subject. Now, in his very recent work upon the history of criminal law, he gives an exposition of this subject which he derives principally from the writer Griesinger, of whom he says that, after having read all that was to be found upon it, he thinks that this concurs with, if not all, the overwhelming

bulk of medical authority of which it may be fairly taken as a summing up:

"Insanity exists when the brain and the nervous system are in such a condition that the mental functions of feeling and knowing, emotion and willing can be performed in their regular and usual manner.

"Insanity means a state in which one or more of the above mentioned mental functions is performed in an abnormal manner, or not performed at all by reason of some disease of the brain or nervous system.

"There are two grand groups or fundamental states of mental anomalies which represent the two most essential varieties of insanity. In the one the insanity consists in the morbid production governing and persistence of emotions and emotional states, under the influence of which the whole mental life suffers according to their nature and form.

"In the other the insanity consists in disorders of the intellect and will which do not (any longer) proceed from a rulling emotional state, but exhibit without profound emotional excitement, an independent, tranquil, false mode of thought and of will (usually with the predominant character of mental weakness). Observation shows further, that, in the great majority of cases, those conditions which form the first leading group precede those of the second group; that the latter appear generally as consequences and terminations of the first, when the cerebral affection has not been cured. * *

"Then the emotions are divided into two classes: those which tend to depression, resulting in melancholia; and those which tend to excitement, resulting in mania, the condition in which the disease of the brain constitutes an excited vehement state of the emotions tending to morbid energy and restlessness. * * * *

"Melancholia often passes into mania. The approach of mania displays itself by great restlessness and loquacity, accompanied with morbid activity of thought. * * *

"* * * The effect of mania upon the intellect is to increase the rapidity and quantity of thought. In its most moderate degrees this relation appears as an exaggeration of the normal faculty of thought. * *

"* * The principal effect of mania upon the intelligence is incoherence arising from precipitation of thought. The patient may call himself Napoleon, the Messiah, God, in short, any great person. He may believe that he is intimately acquainted with all the sciences, or offer to those around him all the treasures of the world. * * *

"Mania may be incompletely developed, in which case the patient shows a natural activity and restlessness, adopts strange, eccentric projects, and is apt to be exceedingly vain, cunning and intriguing, but does not manifest either definite marks of disease of the brain or positive disturbance of the intellect. This state may be the first step towards mania proper, or it may continue for a length of time.

The earlier forms of madness, melancholia and mania, sometimes pass into a condition of feeling in which, however, particular delusions which, in the earlier stage of the disease, may have occurred to the patient in an unstable, transient way, become fixed in his mind and regulate his conduct.

"The condition in which a person is a victim for a time or permanently of fixed delusions is called monomania. The word has been objected to on the ground that it suggests that the disease is much more limited than it really is, involving nothing more than isolated mistaken beliefs not capable of being dispelled by reason. It appears that this view of the disease is incorrect. SUCH FIXED DELUSIONS PROCEED FROM A PROFOUND DISTURBANCE OF ALL THE MENTAL POWERS AND PROCESSES. IT MAY SEEM AS IF THERE WERE MERELY A PARTIAL DESTRUCTION OF THE INTELLIGENCE, WHILE, IN REALITY, THE ESSENTIAL ELEMENTS OF THOUGHT, NORMAL SELF-CONSCIOUSNESS, AND A CORRECT APPRECIATION OF THE SPECIAL INDIVIDUALITY AND ITS RELATION TO THE WORLD ARE UTTERLY PERVERTED AND DESTROYED.

* * * *

"The more limited the circle of these delirious conceptions, the more do they appear on superficial considerations to be simple and even inconsiderable errors of judgment. But how much do such errors, even in the most favorable cases, differ from those mistakes which in the same proceed from deficient knowledge? A long series of psychical disorders must precede them; they are inwardly developed from states of emotion. The whole personality of the patient is identified with them; he can neither cast them from him by an act of will, nor rid himself of them by argument, and in order to the existence of the delirium in this mild form, not only must that long series of emotional states from which it grew have run their course, but there must also remain behind a deficiency of thought to ensure its existence."

"This account of the disease of madness may be summed up in the following short description:—Any one or more of numerous causes may produce diseases of the brain or nervous system, which interferes more or less with the feeling, the will and the intellect of the person affected. Com-

monly the disease, if it runs its full course, affects the emotions first, and afterwards the intellect and the will. It may effect the emotions, either by producing morbid depression or by producing morbid excitement of feeling. In the first, which is much the commoner of the two cases, it is called melancholia, in the second mania. Melancholia often passes into mania. Both melancholia and mania commonly cause delusions and false opinions as to existing facts which suggest themselves to the mind of the sufferer, as explanations of his morbid feelings. *These delusions are often accompanied by hallucinations which are deceptions of the senses. Melancholia, mania and the delusions arising from them, often supply powerful motives to do destructive and mischievous acts.*" * * *

"Insanity affecting the emotions in the form of melancholia and mania is often succeeded by insanity affecting the intellect and the will. In this stage of the disease the characteristic symptom is the existing permanent incurable delusions commonly called monomania. *The existence of any such delusions indicates disorganisation of all the mental powers, including not only the power of thinking correctly, but the power of keeping before the mind, and applying to particular cases, general principles of conduct.*" * * *

"The result of all this is that insanity produces upon the mind the following effects which must be considered in reference to the responsibility of persons shown to have done acts which would but for such effects, amount to crime. Insanity powerfully affects, or may affect the knowledge by which our actions are guided, the feelings by which our actions are prompted, the will by which our actions are performed, whether the word "will" is taken to mean volition or a settled judgment, the reason acting as a standing control on such actions as relate to it. The means by which these effects are produced are unnatural feelings, delusions or false opinions as to facts, hallucinations or deceptions of the senses; impulses to particular acts or classes of acts, and in some cases (it is said) a specific physical inability to recognise the difference between moral good and evil as a motive for doing good and avoiding evil."

That being the statement by, I suppose, the most eminent and recent authority upon the legal view of what insanity is, so far as it is material to the question now in hand, namely responsibility for criminal acts, I turn to

The question of responsibility according to the law.

Amos says :

"This topic which in many criminal cases excites an interests oftentimes of the most strained and afflicting sort is one surrounded with peculiar difficulties of its own, due to the complexity and variety of the facts which it brings into consideration. These facts are partly physical or belonging to that indistinctly marked region which lies between physical and psychological science ; partly ethical or dependent on a given person's apprehensions of right or wrong under abnormal or exceptional conditions, partly legal or political or dependent upon the amount of legal responsibility attributable to various degrees of mental health, in view of the protection claimed by individual persons, and of a due regard to the general safety of the whole community. It is probably rather in the first of these regions, that is the physical or psychological one, that the main practical difficulty is experienced. It is generally admitted in all systems of law that sufficient and satisfactory grounds for exculpation are found in an actual mental incapacity, whether fixed or transient, of knowing at the moment of doing an act that it is forbidden by law, or at any rate that it is morally reprehensible according to some moral notions in the agent's own mind—or in a physical incapacity to abstain from doing the act. The difficulty is presented at the moment at which it is attempted to establish the fact of either of these sorts of incapacity, and it is greatly exaggerated in cases where a legal system instead of exculpating all insane persons as a class affects to attach different degrees of punishment to different measures of presumed, moral responsibility.

The records of criminal trials are full of an almost endless diversity of conditions of medical and moral theories to account for them."

Then Stephen's notion of the law, as it probably is, is extracted from the Digest:

"No act is a crime if the person who does it is at the time when it is prevented (either by defective mental power—or) by any disease affecting his mind:

"(a) From knowing the nature or quality of his act, or

"(b) From knowing that the act is wrong, or

"(c) From controlling his own conduct, unless the absence of the power of control has been produced by his own default. But

an act may be a crime although the mind of of the person who does it is affected by disease, if such disease does not, in fact, produce upon his mind one or other of the effects above mentioned in reference to that act."

Then in answer to the question :

"What is the meaning of a maniac laboring under such a defect of reason that he does not know that he is doing what is wrong ?

"It may be said that this description would apply only to a person in whom madness took the form of ignorance of the opinion of mankind in general as to the wickedness of particular crimes—murder, for instance—and such a state of mind would, I suppose, be so rare as to be practically unknown. This seems to me a narrow view of the subject, not supported by the language of the judges.

"I think that any one would fall within the description in question who was deprived by disease affecting the mind of the power of passing a rational judgment on the moral character of the act which he meant to do.

"Suppose for instance, that by reason of disease of the brain, a man's mind is filled with delusions, which if true, would not justify his proposed act, but which in themselves are so wild and astonishing as to make it impossible for him to reason about them calmly or to reason on matters connected with them, &c., &c.

He quotes Bucknill and Tuke as follows :

"It is of the highest importance to distinguish between that part of wrong conduct which patients are able and that which they are unable to control.

"Clinical experience alone gives the power of distinguishing between the controllable wrong conduct which is amenable to moral influences, and that violence utterly beyond the command of the will which yields only to physiological remedies."

Then Sir James Stephen shows very clearly that the language of the judges is is doubtful and capable of different interpretations. He adds this :

"I understand by the power of self control the power of attending to general principles of conduct and distant motives and comparing them calmly and steadily with immediate motives and with the special pleasure or other advantage of particular proposed actions.

"Will consists in an exertion of this power of attention and comparison up to the mo-

ment when the conflict of motives issues in a volition or act.

"Diseases of the brain and the nervous system may in any one of many ways interfere more or less with will so understood. They may cause definite intellectual error, and if they do so their legal effect is that of other innocent mistakes of fact.

"Far more frequently they affect the will by either destroying altogether, or weakening to a greater or less extent, the power of steady, calm attention to any train of thought and especially to general principles and their relation to particular acts. They may weaken all the mental faculties so as to reduce life to a dream. They may act like a convulsion fit. They may operate as resistible motives to an act known to be wrong. *In other words they may destroy, they may weaken or they may leave unaffected the power of self control.*

"THE PRACTICAL INFERENCE FROM THIS SEEMS TO ME THAT THE LAW OUGHT TO RECOGNIZE THESE VARIOUS EFFECTS OF MADNESS. IT OUGHT, WHERE MADNESS IS PROVED, TO ALLOW THE JURY TO RETURN ANY ONE OF THESE VERDICTS :

"(1) GUILTY ;

"(2) GUILTY ; BUT HIS POWER OF CONTROL WAS WEAKENED BY INSANITY ;

"(3) NOT GUILTY ON THE GROUND OF INSANITY."

I once again call the attention of the House to the suggestion as to what the law ought to be, and I call attention to it because *I shall point out before I have done that this practical result of dealing with the second class of cases, namely, guilty, but his power of control was weakened by insanity, is achieved by other means to-day, namely,*

By the Action of the Executive.

Again Stephen says :

"As to the verdict of not guilty on the ground of insanity, the foregoing observations show in what cases, in my opinion, it ought to be returned, that is to say in those cases in which it is proved that the power of self-control in respect of the particular act is so much weakened that it may be regarded as practically destroyed, either by general weakening of the mental powers, or by morbid excitement, or by delusions which throw the whole mind into disorder or which are evidence that it had been thrown into disorder by diseases of which they are symptoms, or by impulses which are irresistible and not merely unresisted." * * *

"The position for which lawyers have always contended as to insanity is that parts of the conduct of mad people may not be affected by their madness, and that if such parts of their conduct are criminal they ought to be punished for it. It may, however, be asked how ought they to be punished? *Ought they to be punished in all respects like sane people.* To this I should certainly answer, yes, as far as severity goes ; *no, as far as the manner of punishment goes.* The man who, though mad, was found guilty without any qualification of murder I would hang, but if the jury qualified their verdict in the manner suggested in respect of any offender I think he should be sentenced, if the case were murder, to penal servitude for life, or not less than, say 14 years, and in cases not capital to any punishment which might be inflicted on sane man.

"The question what are the mental elements of responsibility, is, and must be, a legal question.

"I believe that by the existing law of England, those elements, so far as madness is concerned, are knowledge that an act is wrong and power to abstain from doing it, and I think it is the province of judges to declare and explain this to the jury.

"I think it is the province of medical men to state, for the information of the court, such facts as experience has taught them, bearing upon the question whether any given form of madness affects, and in what manner, and to what extent it affects either of these elements of responsibility ; and I see no reason why, under the law as it stands, this division of labor should not be fully carried out."

In the Criminal law commission to which I have already referred, Baron Bramwell sends a letter to the commissioners stating the results of his murder trials, from which I extract this :

"Six persons in six cases were acquitted on the ground of insanity, and rightly. I do not mean that the prisoners were as insane as the law requires, but the cases were those of real madness."

The Facts which show Riel to have been Insane.

Now, Sir, having thus attempted to state, not in my own words, but in words which I think will be taken as those of the greatest authority, what are the doctrines of the law upon this subject, I propose to address myself for a brief space to what was the evidence in this particular case

adduced at the trial as distinguished from other circumstances which might have been adduced. And first of all, the most important point in the case is this: **THE MAN HAD BEEN INSANE.** Unquestionably he had been insane. I say that is a most important point, and therefore it is first to be taken up. Dr. Roy, the medical superintendent of the Beauport lunatic asylum, was examined, and the substance of his testimony was:

The prisoner was put in the asylum by the Quebec Government in June, 1876, and discharged January, 1878.

Dr. Roy, in discharge of his duty, studied his case and attended him. He was unquestionably insane at that time. The type was magalomania. The symptoms or prominent features are connected with religion, or power, pride and egotism. The patient cannot bear contradiction, and becomes irritated. There are delusions.

On ordinary subjects, and where not affected by the delusions, the patient seems to reason well, and may be clever. Riel had these symptoms, and was at that time of unsound mind, and incapable of controlling his acts.

The disease may disappear, or intermit and recur.

Riel was of sound mind when released.

The witness heard the evidence given by the witnesses as to Riel's words and conduct during his visit to the North-West.

The symptoms were the same as he had witnessed himself in the asylum at Beauport; and he believed Riel was insane at the time in question.

Now, according to this statement, if we were to assume, that that was to conclude the case, according to the opinion of Dr. Roy as to what his condition was during the rebellion, I would infer the right to acquit him on the ground of insanity.

BUT WHAT IS UNDISPUTED AND INDISPUTABLE, IS THAT THE MAN WAS INSANE FROM 1876, TO 1878, AND THAT THE SYMPTOMS HAD RECURRED IN THE YEAR 1885—THE SAME SYMPTOMS WHICH OCCURED WHEN HE WAS UNQUESTIONABLY INSANE, FROM 1876 TO 1878.

Now, there was more evidence on this subject which I want to refer to at another period; but I may say that what has been made very plain, though it was not proved on the trial, is that he had

been in two other asylums, and I now refer to the

Probabilities of a Recurrence of Insanity.

Browne, in the "Medical Jurisprudence of Insanity," says:

"One circumstance must not be overlooked in connection with the durability of insanity, and that is that there is a tendency to recurrence even after complete restoration to health. Perhaps of 100 persons who have an attack of mania and recover from it, fifty will, after such recovery, again become insane. After insanity has passed away there seems to exist a hyper sensitive condition of mind which is ill-suited to carry on the rough intercourse of the world and its society. The man who has recovered is not so well as he was before he was taken ill. Disease always chooses the weak for its victims. Disease, like water, will take the easiest way, and as the individual who has recovered from insanity is weak, in that he labors underth is hyper-sensitive condition of mind, he a second time falls under the wheels of some Juggernaut catastrophe. Any great events in the world's history cause insanity; but the events are seeds which have fallen by the way-side, they require to fall on ground well suited before they can spring up and blossom in insanity—and the good ground is weakness.

"Thus we have insanity connected with child-birth, we have it connected with the weakness of childhood, with the weakness of age, with the change of life and various bodily diseases, and finally, we find it in connection with previous attacks of mental disease. The result then of these researches, which have been made into the intricacies of this subject, are these: *that of twelve persons attacked with insanity, six recover and six die sooner or later; that of the six who recover three only will remain sane during the rest of their lives, and that the recovery of the other three will not be permanent.*"

The result of that is, that once found it is that a man is unquestionably insane, the chances are three out of four either that he will continue insane till he dies, or if he recovers, that recovery will be but temporary and he will once again become insane. Brown says again:

"With regard to the one, when it does take place, it is to be remembered that health no more than Rome, is to be built up in a day. Health returns very gradually. In some cases it is true that a man is sane to-day

and insane to-morrow, and that the change from insanity to sanity, may be as rapid ; but it is certainly exceptional. It is easy to jump over a precipice, but if one wants to get to the top from the bottom he must be content to clamber up the hill. It need scarcely be added that as recovery of health is gradual so must the recovery of responsibility, or civil ability be also a matter of time. But as the law cannot recognise the minute distinctions which exist between to-day and to-morrow, it cannot recognise graduated responsibility, and it is only necessary to remember that this recovery of mental strength is gradual, that due allowance may be made for those persons who have recently suffered from an attack of mental disease, and that *it is safe to regard such persons as still irresponsible for criminal acts and incapable of civil privileges, even although the recovery may seem complete, unless the contrary can be proved. Let the presumption be in favor of their want of capacity and their irresponsibility, and no injustice is likely to arise.* At the same time presumption is liable to be rebutted by proof of its opposite."

In the commission to which I have already referred, Dr. Tuke, being examined, made these answers :

"The fact is certain that insanity constantly exists with long lucid intervals, and that it is more or less patent at different times.

"Q. And that the patient fluctuates in a condition between what may be termed sanity and insanity, the line between which is not easily definable?—A. Yes ; that is a constant form of what we call insanity with lucid intervals, or insanity with remissions, or recurrent insanity."

A case closely resembling Riel's.

Then Clouston gives one example, that of patient "C. Y." of whom he says :

"His mental condition was at that time exactly that intense exaltation, that morbid mental 'expansion,' that 'ambitious delirium,' or 'mania of grandeur' which we find so commonly in general paralysis, and which some physicians suppose to be characteristic of that disease. . . . In three months he had become quiet in manner, self composed and rational, but had just a suggestion of his former state of mind in being too pleased with things and too grateful for little kindnesses. His friends thought him well and he was removed home.

In seventeen days he was back again. He

would come up and be most pleased to see you, and in a moment, sometimes with some little provocation, such as your not agreeing at once with him that he was an earl and sometimes without he would strike you suddenly, very often going down on his knees immediately after and in a theatrical manner begging your pardon and hopping he had not offended you. * * * He labored under chronic maniacal exaltation."

Then comes the instance of "C.J.," who was admitted, October, 1866, discharged, January, 1867 ; admitted, April, 1870, discharged, May, 1870 ; admitted, August, 1871, discharged, September, 1871 ; admitted, December, 1872, discharged, February, 1873 ; admitted, February, 1874, discharged, May, 1875 ; admitted, August, 1877, discharged, September, 1877 ; admitted, November, 1880, discharged, January, 1881 ; admitted, December, 1881, discharged, March, 1882, and he gives several other instances showing the constant recurrence of insanity. I do not think that too much importance can be attached to the circumstance of the unquestioned and unquestionable insanity of LOUIS RIEL, as proved by the facts to which I refer at this precedent time, and to the character of his alleged illusions or delusions, as you please to call them, at the later date. Having regard to the knowledge and experience we have with reference to the probability of recurrent insanity it seems to me these circumstances show that *he was laboring under insane delusions on religion and politics, prior to, and during the outbreak, and that these delusions were directly connected with the crime with which he was charged.* He believed himself a prophet, a priest, a religious potentate ; he had visions ; he had irrational ideas as to foreign policy, as to the lands and the division of them, as to other nationalities, as to religion, as to politics, as to his influence, as to his mission, and as to the Metis nation. Of these facts I think the evidence taken at the trial afforded abundant testimony. I think it affords abundant testimony as to his condition anterior to the outbreak, and I have taken the evidence chronologically.

Now, the evidence which was given by the priests as to his condition is to be accepted, with this observation—that if it were possible for any one to suppose that any course of conduct on his part could have influenced them to swerve from the accurate, honest truth—if it were possible, which I am the last to suggest, that such a thing could be, it is clear that they would not have been swerved in favor of this man, from whom they had suffered so much, who had cast aside their religion, who had profaned their churches, who had insulted themselves, who had assumed their position, who had led away their flocks, who they thought was instrumental, directly or indirectly, in the murder of two of their order, who had caused all the misery of the people in benefitting whom their whole lives had been spent—I say it is impossible to suppose that they could have been swerved in favor of this man by anything in the way of feeling; and at that time he had not recanted his religious errors. But they state not only opinions, but facts, and facts of the most important character.

Testimony of Father Andre.

Father André says on religion and politics he and Riel frequently conversed, against his will; because *on these subjects Riel was no longer the same man*; it seemed as if there were two men in him; he lost all control of himself on those questions. Twenty times he told Riel he would not speak on those subjects, because Riel was a fool, did not have his intelligence of mind; that was the witness' experience; he had the principle that he was an autocrat in religion and politics, and he changed his opinion as he wished; his ideas changed; to-day he admitted this, and to-morrow he denied it; he believed himself infallible; he would not allow the least opposition at all; immediately his physiognomy changed and he became a different man. Then comes a most important act. *All the priests met* and they discussed whether it was possible to allow Riel to continue in his religious duties, and they unanimously decided that he was not responsible on these

questions; that he could not suffer any contradiction; that he was completely a fool in discussing these questions: it was like showing a red flag to a bull. Now, remember that these statements of Riel to Father André were made and this conclusion was reached long before the outbreak, and before, as he says, Riel had actually risen against the priests. These erroneous ideas, and these manifestations of irregularity of mind, were during the latter part of 1884 and the early part of 1885, before the rebellion.

Father Fourmond's Testimony.

Father Fourmond says that he was present at this meeting of the priests, that it was he who raised the question; and he states the facts on which his view rested. He says: Before the rebellion it seemed as if there were two men in the prisoner; in private conversation he was affable, polite, pleasant and charitable; if contradicted on religion and politics he became a different man and would be carried away with his feelings; he would use violent expressions. As soon as the outbreak began he lost all control of himself; he often threatened to destroy all the churches. He had extraordinary ideas on the subject of the Trinity; *according to his ideas it was not God who was present in the Host but an ordinary man six feet high*. As to politics he wanted first to go to Winnipeg and Lower Canada and the United States, and even to France; and he said "We will take your country even," and then he was to go to Italy and overthrow the Pope, and then he would choose another Pope of his own making; he said something to the effect that he would appoint himself as Pope. As the agitation was progressing he became a great deal more excitable; *at the time of the rebellion Father Fourmond thought him insane*. At one time when there was a gathering he kept following the witness into the tents and compelled him to leave the place and cross the water. There was a very extraordinary expression on his face; he was excited by the opinions he had expressed on religion. He said to the women:

"Woe unto you if you go to the priests, because you will all be killed by the priests." All of a sudden, when the witness came to the boat, Riel came up with great politeness and said: "Look out, Father; I will help you to get on the boat." In an instant he passed from rage to great politeness. Once again at the Council the witness was brought up for trial; Riel was enraged, and called him a little tiger; but when the witness was leaving, he passed again from rage to extraordinary politeness, offered a carriage and took the witness' parcel and carried it for him.

Charles Nolin's Testimony.

Then Charles Nolin (whose conduct seems to have been inconsistent and certainly unfriendly) says, that about a month after prisoner arrived, say the end of July, he showed him a book he had written in the States. The first thing there was to destroy England and Canada, and also to destroy Rome and the Pope. He said he had a divine mission to fulfill and showed Bishop Bourget's letter, eleven years old, as proof. Riel showed him a book written with buffalo blood, the plan in which that was, after taking England and Canada, he would divide Canada, and give Quebec to the Prussians, Ontario to the Irish, and the North-West Territories he divided between the European nations. The Jews were to have a part, and the Hungarians and Bavarians. As to the money he wanted from the Government, he said if he got the money he wanted from the Government, he would go wherever the Government wished to send him. He told Father André, if he was an embarrassment to the Government by remaining in the North-West, he would even go to the Province of Quebec. He said also if he got the money he would go to the United States and start a paper and raise the other nationalities in the States. He said: 'Before the grass is that high in this country, you will see foreign armies in this country.' He said: "I will commence by destroying Manitoba, and then I will come and destroy the North-West

and take possession of the North-West." *He told the witness that he considered himself a prophet; one evening there was a noise in Riel's bowels, and Riel told him that it was his liver, and that he had inspirations which worked through every part of his body. He wrote his inspirations on a sheet of paper, and said he was inspired. Whenever the word "police" was pronounced, he became very excited. He proposed a plan to the witness, and said he had decided to take up arms, and the first thing was to fight for the glory of God, for the honor of religion, and for the salvation of souls. Before the Duck Lake fight, he was going about with a crucifix a foot and a-half long, taken out of the church. Now all these things save the last were before the rebellion, and a great portion of them in the year before the rebellion, the year 1884.*

Garnot's Testimony.

Then, P. Garnot proves that about the beginning of the outbreak, Riel talked to him about changing the Pope; wanting to name Bishop Bourget Pope of the new world, *he said that the spirit of Elias was with him; he wanted the people to acknowledge him as a prophet, and said he had the spirit of Elias in him and was prophesying. Another time he declared he was representing St. Peter. Almost every morning he would come in front of the people and say such and such a thing would happen. When he slept at the witness' house he was praying loud all night;*

There was no one else there.

He would not stand any contradiction by anyone. He several times said how this country was to be divided into seven Provinces, one for the French, Germans, Irish, and others; he mentioned Italians; he expected the assistance of an army of several nationalities; he mentioned the Jews, he expected their assistance and money, and he was going to give them a Province as a reward for their help. He had no doubt of his success, or that any obstacle could prevent him from succeeding; he always mentioned that he was going to succeed, that he had a divine

mission, and was an instrument in the hands of God. The witness thought the man was crazy, because he acted very foolish, and communicated to others at the time this impression of him.

Evidence of George Ness.

George Ness says that at the beginning of the outbreak he witnessed a difficulty between Riel and Father Moulin, in which Riel accused Bishop Grandin and Bishop Taché of being thieves and rogues; Father Moulin wished to speak to the people, Riel refused and said: "No, we won't let him speak; take him away, take him away, we will tie him." Riel said he would take possession of the church. Father Moulin said he protested. "Look at him," said Riel, "he is a Protestant." He said that the Spirit of God was in him. Father Moulin said he was making a schism in the church. Riel said Rome had fallen. "*Rome est tombée*," and that the Pope was no longer legally Pope; that the Spirit of God was in him (Riel), and that he could tell future events.

Doctor Willoughby also.

Dr. Willoughby says: At the commencement he saw Riel. He said his proclamation was at Pembina, that it was going forth, and he would be joined by Indians and half-breeds, and that the United States was at his back. He intended to divide the country into seven portions he mentioned as parties, Bavarians, Poles, Italians, Germans and Irish. There was to be a New Ireland in the North-West. These nationalities were going to assist him in the rebellion, before the war was over, and they would have their portion. He mentioned the Irish of the United States, the Germans, Italians, Bavarians and Poles. He put Germany and Ireland twice; first, the Irish and Germans of the United States, then Germany and Ireland themselves. The proposition did not appear rational to the witness, who also proves the excitement of Riel.

Similar Evidence from other Witnesses.

Saunderson says: Riel told him that he was going to divide the country into sevenths, one-seventh for Canadians or white settlers, one for the Indians, one for the half-breeds, three-sevenths to remain to support the Government. He said he had cut himself loose from Rome altogether, and would have nothing more to do with the Pope. Walters says: Riel told him that the land was to be divided—one-seventh to the pioneer whites one-seventh to the French-half-breeds, one-seventh to the church and schools, and the balance was to be government lands. He said that if the whites struck a blow, a thunderbolt from heaven would strike them, that God was with their people. Lash says: He mentioned that he was going to give one-seventh to the Indians and one-seventh to the half-breeds. He had been waiting fifteen years and at last his opportunity had come. Astley proposed an exchange of prisoners, but Riel came up and said he could not see it in that light, but that he would exchange them for Hon. L. Clarke, Registrar Sproat and McKay. We know what an exchange of prisoners is, but Riel proposed that the most important personages on the other side should be given up to him in lieu of inferior prisoners on the same side whom he had in his hands. Jackson says Riel told him his brother's mind was affected; that it was a judgment on him for opposing Riel. He talked of giving one-seventh of the proceeds of the land to the Poles, one-seventh to the half-breeds and one-seventh to the Indians, and some to the Hungarians, and so on. I was surprised to hear it stated that it was a mark of sanity in Riel that he should have thought Jackson insane, while we know that inmates of the insane asylums know that their neighbors are insane and discuss the question of their insanity.

Mackay's Evidence

Mackay had a conversation with Riel. He appeared very excited and said:

"It was blood, and the first blood they

wanted was mine. There were some little dishes on the table, and he got hold of a spoon and said: You have no blood—you are a traitor to your people. Your blood is frozen, and all the little blood you have will be there in five minutes, putting the spoon up to my face and pointing to it. I said: If you think you are benefitting your cause by taking my blood you are quite welcome to it. He called his people and the committee, and wanted to put me on trial for my life, and Garnot got up and went to the table with a sheet of paper, and Gabriel Dumont took a chair on a syrup keg, and Riel called up the witnesses against me. He said I was a liar, and he told them that I had said all the people in that section of the country had risen against them. He said it was not so, that it was only the people in this town. He said he could prove that I was a liar by Thomas Scott.

Then goes on the account of the trial during which Riel was up stairs.

"When he came down, he, Riel, apologised to me for what he had said, that he did not mean it to me personally, that he had the greatest respect for me personally, but that it was my cause he was speaking against and he wished to show he entertained great respect for me, he also apologised in French to the people there, and he said as I was going out that he was very sorry I was against him. That he would be glad to have me with them, and it was not too late for me to join them yet."

Young's Testimony.

Young says:

Riel explained that at Duck Lake he gave three commands to fire.

1. In the name of God who made us reply to that.
2. Then they fired and Crozier's man replied: and Riel said: In the name of God the Son who saved us reply to that.
3. In the name of God the Holy Ghost who sanctifies us reply to that.

Riel gives a like account in less detail to half a dozen witnesses of his action at that time and General Middleton says:

"Of course I had heard constantly before about reports of his insanity. I heard for instance one or two of the people that escaped from him, scouts, half-breeds. One man, I remember told me 'Oh! Riel is mad, he is a fool.' He told me what he was doing at Batoche. So that I really had heard it,

but I came to the conclusion he was very far from being mad or a fool."

To that is to be added the prisoner's own conduct at the trial, the statements he made, even in the course of his interruptions during the trial, with reference to these points, and then in his addresses. In them, you will find him declare that he does not plead insanity, and you find him saying he showed that calmness which they said he could not show. He obviously, in the address he made to the jury, was doing his best to restrain himself in respect to those matters which had been presented as proofs of his insanity, with the view and in the hope, so far as was consistent with his assumed position, that he might prevent the jury from coming to the conclusion that he was insane. For instance, this extraordinary division of the territory into sevenths among different nationalities was pressed very much. What does he say to that? He says:

"A good deal has been said about the settlement and division of lands, a good deal had been said about that. I do not think my dignity to-day here would allow me to mention the foreign policy, but if I was to explain to you or if I had been allowed to make the questions to witnesses, those questions would have appeared in an altogether different light."

A little after, when the verdict had been given and he was showing his reasons against the sentence, you will find he developed the policy which, at this time he preferred not to do, when he restrained himself, as those people often do under similar circumstances, in order to obtain that which he desired, a verdict which would not find him insane. He speaks in the same way, thanking General Middleton and Captain Young for proving him as he believes he is sane.

Riel on his own Inspiration.

Having touched the question of foreign policy, as he calls it, in the lands, he feels called upon to deal with this question of inspiration, and he attempts to explain that matter. He says:

"It is not to be supposed that the half-breeds acknowledge me as a prophet if they

had not seen it that I could see something into the future. *If I am blessed without measure I can see something into the future, we all see into the future more or less.* As what kind of a prophet would I come? Would it be a prophet who could all the time have a stick in his hand and threatening, a prophet of evil? If the half-breeds have acknowledged me as a prophet, if on the other side priests come and say that I am polite, if there are general officers, good men, come into this box and prove that I am polite, prove that I am decent in my manners, in combining all together you have a decent prophet. An insane man cannot withhold his insanity, if I am insane my heart will tell what is in me. *Last night while I was taking exercise the spirit who guides and assists me and consoles me, told me that to-morrow somebody will come 't'aidér,' and help me.* I am consoled by that. While I was recurring to my God, to Our God, I said: But woe to me if you not help me, and those words came to me in the morning: 'In the morning some one will come *t'aidér*, that is to-day.' I said that to my two guards and you can go for the two guards. I told them that if the spirit that directs me is the spirit of truth it is to-day that that I expect help. This morning the good doctor who has care of me came to me and said: 'You will speak to-day before the court,' I thought I would not be allowed to speak, those words were given to me to tell me that I would have the liberty to speak. There was one French word in it, it meant, I believe, that there was to be some French influence in it, but the most part English. It is true that my good lawyers from the Province of Quebec have given me good advice. Mr. Nolin came into the box and said said that Mr. Riel said that he heard a noise in his bowels and that I told him that it meant something. I wish that he had said what I said, what I wrote on the paper of which he speaks, perhaps he can yet be put in the box. I said to Nolin "Do you hear?" Yes, I said there will be trouble in the North-West and was it so or not, has there been no trouble in the North-West? Besides Nolin knows that among his nationality which is mine, he knows that the half-breeds as hunters can foretell many things, perhaps some of you have a special knowledge of it. I have seen half-breeds who say: "My hand is shaking, this part of my hand is shaking, you will see such a thing to-day," and it happens. Others will say: 'I feel the flesh of my leg move in such a way, it is a sign of such a thing, and it happens.' There are men who know that I speak right. If the witness spoke of that fact with which he mentioned to show that I

was insane he did not remember that perhaps on that point he is insane himself, because the half-breed by the movement of his hand, sometimes of his shoulders, sometimes his leg, can have certain knowledge of what will happen. To bring Sir John to my feet, it was well reported it would appear far more reasonable than it has been made to appear. Mr. Blake, the leader of the Opposition is trying to bring Sir John to his feet in one way. He never had as much at stake as I had, although the Province of Ontario is great it is not as great as the North-West.

"I am glad that the Crown have proved that I am the leader of the half-breeds in the North-West, I will perhaps be one day acknowledged as more than a leader of the half-breeds, and if I am I will have an opportunity of being acknowledged as a leader of good in this great country.

"One of the witnesses said that I intended to give Upper Canada to the Irish, if he had no mystery he would have seen that Upper Canada could not be given to the Irish without being given to England, he rested only upon his imagination.

"There is another thing about the partition of the lands into seven. I do not know if I am prepared to speak of it here because it would become public information, there is so much at stake that if I explained that theory Canada would not very long remain quiet."

Then, he says about the delegations:

"The half-breeds also know that I told them I would be punished, that I did not say it of my own responsibility but that I said it in the same way as I had told them other things. It was said to me that the nation would be punished. Why? Because she had consented to leave Rome too quick. What is the meaning of that? There was a discussion about it, too quick. They said that they should do it at once. Too quick does not mean too soon. If we say yes, it shows no consideration to the man. If God wants something and if we say yes, that is not the way to answer him; He wants the conscience to say yes: Oh my God I do thy will; and because the half-breeds quickly separated from Rome in such a quick manner it was disagreeable to God and they were punished, and I told them it would happen—fifty of those who are there can prove it. But you will say: 'You did not put yourself as a prophet.' The nineteenth century is to be treated in certain ways, and it is probably for that reason I have found the word 'Exovede.' I prefer to be called one of the flock. I am no more

than you are, I am simply one of the flock, equal to the rest. If it is any satisfaction to the doctor to know what kind of insanity I have, *if they are going to call my pretensions insanity, I say humbly, through the grace of God I believe I am the prophet of the new world.*

"I wish you to believe that I am not trying to play insanity; there is in the manner, in the standing of a man, the proof that he is sincere, not playing. You will say 'What have you got to say?' I have to attend to practical results. Is it practical that you be acknowledged as a prophet? Is it practical to say it? I think if the half-breeds have acknowledged me, as a community, to be a prophet, I have reason to believe that it is beginning to become practical. I do not wish for my satisfaction the name of prophet. Generally the title is accompanied with such a burden, that if there is satisfaction for your vanity there is a check to it."

Riel thankful to be found Guilty and Sane.

Then, the moment the verdict was given and the prisoner was called to speak in respect of sentence, he congratulates himself, and thanks the jury for having found him sane, and says: "At least, if I were going to be executed, I would not be executed as an insane man." Then he goes on to say:

"Must not I take advantage of the situation to show that they are right and that I am reasonable, and yesterday, when I said by repeating the evidence which has been given against me, when I said in conclusion that you had a decent prophet, I have just to-day the great opportunity of proving it is so, besides clearing me of the stain of insanity, clearing my career of the stain of insanity. I think the verdict that has been given against me is a proof that I am more than ordinary myself, but that the circumstances and the help that is given is more than ordinary, are more than ordinary, and although I consider myself only as others, yet by the will of God, by his Providence, by the circumstances which have surrounded me for fifteen years, I think that I have called to do something which at least in the North-West nobody has done yet, and in some way I think that to a certain number of people the verdict against me to-day is a proof that may be I am a prophet, may be Riel is a prophet, He suffers for it. Now, I have been hunted as an elk for fifteen years. David has been seventeen, I think. I would have to be about two years still; if the misfortunes that

I have had to go through were to be as long as those of the old David, I would have two years still, but I hope it will come sooner."

Then he proceeds to describe what he had kept concealed in the earlier speech—the question of the lands. He says:

"The half-breeds had a million and the land grant of 1,400,000 acres out of about 9,500,000, if I mistake not, which is about one-seventh of the land of Manitoba. You will see the origin of my insanity and of my foreign policy. One seventh of the land was granted to the people, to the half-breeds of Manitoba, English and French, Protestant and Catholic. There was no distinction whatever, but in the subdivision, in the allotment of those lands between the half-breeds of Manitoba, it came that they had 240 acres of land. Now, the Canadian Government say, that we will give to the half-breeds of the North-West, 240 acres. If I was insane I would say yes, but as I have had, thank God, all the time, the conscientiousness that I had a certain degree of reason, I have made up my mind to make use of it, and to say that one-seventh of the lands in Manitoba, as the inauguration of a principle in the North-West, had to bring to the half-breeds of the North-West, at least as soon as possible, the guarantee for the future that a seventh part of the lands will also be given to them. And seeing and yourself understanding how it is difficult for a small population as the half-breed population to have their voice heard, I said what belongs to us ought to be ours. Our right to the North-West is acknowledged, our coproprietorship with the Indians acknowledged, since one-seventh of the lands is given us, but we have not the means to be heard, what we do? I said to some of my friends: If there is no other way, we will make the people who have no country understand that we have a country here which we have ceded on condition, we want the seventh of the land, and if the bargain is not kept, it is null and void, and we have no right to retreat again, and if we cannot have our seventh of the lands from Canada, we will ask the people of the States, the Italians to come and help us as immigrants, the Irish I will count them."

"Now, it is my turn, I thank you. I count them and I will show you if I made an insane enumeration of the parties. I say, we will invite the Italians of the States, the Irish of the States, the Bavarians of the States, Poles of the States, Belgians of the States, and if they come and help us here to have the seventh, we will give them each a

seventh ; and to show that we are not fanatics, that we are not partisans, that we do not wish only for the Catholics, but that we have a consideration for those who are not Catholics, I said, we will invite the Danes. We will invite the Swedes, who are numerous in the States, and the Norwegians, to come around, and as there are Indians and half-breeds in British Columbia, and as British Columbia is a part of the immense North-West, we said, not only for ourselves, but speaking for our children, we will make the proposition that if they help us to have our seventh on the two sides of the Rocky Mountains, they will each have a seventh ; and if the Jews will help us, and on the condition that they acknowledge Jesus Christ as the Son of God and the only Saviour of human kind, if they help us with their money, we will give them one-seventh. And I said, also, if the principle of giving one-seventh of the lands is good in the North-West, if the principle of giving one-seventh of the lands to the half-breeds in the North-West is good, it ought to be good in the east also, and I said, if it is not possible that our views should be heard, we will—I, as an American citizen—I will invite the Germans of the States and I will say : If you ever have an opportunity of crossing the line in the east, do it, and help the Indians and the half-breeds of the east to have a revenue equivalent to about one-seventh. And what would be the reward of the Germans ? The reward of the Germans would be, if they were successful, to take a part of the country and make a new German-Indian world somewhere in British North America. But that is the last resort, and if I had not had a verdict of guilt against me I would have never said it. Yesterday it was just those things that I have avoided to say, when I said, I have a reason not to mention them. And when I said, as one of the witnesses said, that my proclamation was in Pembina, I think I am right, because of this trial. You see that my pretension is that I can speak a little of the future events : My trial has brought out the question of the seventh, and although no one has explained the things as I do now, still there is enough said about the sevenths of the lands and the divisions of the lands into sevenths, seven nationalities, while it ought to have been said ten nationalities, that by telegraph to-day my proclamation is in Pembina truly, and the States have my ideas. They have my ideas. * * * And Gabriel Dumont, on the other side of the line, is that Gabriel Dumont inactive ? I believe not. He is trying to save me from this box. This is no threat. I have written

it. I have written a document of that kind ; and put it into the hands of Captain Dean, three weeks ago. This is not an inspiration of the moment. I have the right to thank God for the provision of what happens to-day. But another means. I don't wish these means."

He would Establish a New Ireland.

Then he reverts to it again, and says :

"My heart will never abandon the idea of having a new Ireland in the North-West, by constitutional means, inviting the Irish of the other side of the sea to come and have a share here ; a new Poland in the North-West, by the same way ; a new Bavaria by the same way ; a new Italy in the same way. And on the other side of Manitoba—and since Manitoba has been erected it has been increased since 1870, at least by 9,600,000 acres of land, now it is 96,000,000, say there is about 86,000,000, acres of land to which the half-breeds title has not been extinguished. One seventh gives 12,000,000 of of those lands—and I want French Canadians to come and help us there to-day, to-morrow, I don't know when. I am called here to answer for my life to have time that I should make my testimony. And on the other side of the mountains there are Indians, as I have said, and half-breeds, and there is a beautiful island, Vancouver, and I think the Belgians will be happy there, and the Jews who are looking for a country for 1,800 years, the knowledge of which the nations have not been able to attain yet, while they are rich and the lords of finance. Perhaps will they hear my voice one day and on the other side of the mountains while the waves of the Pacific will chant sweet music for them to console their hearts for the mourning of 1,800 years, perhaps will they say : He is the one thought of us in the whole Cree world, and if they help us there on the other side between the great Pacific and the great Rockies to have a share, the Jews from the States."

Then he says :

"The Scandinavians, if possible, they will have a share. It is my plan, it is one of the illusions of my insanity, if I am insane, that they should have on the other side of the mountain a new Norway, a new Denmark, and a new Sweden, so that those who spoke of the lands of the great North-West to be divided in seven forget that it was in ten, the French in Manitoba, the Bavarians, the

Italians, the Poles and the Irish in the North-West, and then five on the other side too."

Then again he says :

"Not insanity, because it is disposed off but whether I am a deceiver or an imposter. I have said to my lawyers: 'I have written things which were said to me last night, and which have taken place to-day.' *I said that before the court opened last night the spirit that guides and assists me told me: 'The court will make an effort.'* Your honor, allow me to speak of your charge, which appeared to me to go on one side. The court made an effort, and I think that word was justified. At the same time there was another thing said to me: 'A commission will sit; there will be a commission.' I did not hear yet that a commission is to take place. I asked for it. You will see if I am an imposter thereby."

"In Batoche many things which I said have already happened. It was said to me: 'Not far from here.' And that is why I never wanted to send the half-breeds far. I wanted to keep them, and it was said to me: 'I will not begin to work before 12 o'clock and when the first battle opened I was taking my dinner at Duck Lake. When the battle began it was a little after 12 o'clock. 'I will not begin to work before 12 o'clock.' And what has happened? And it was said to me: 'If you don't meet the troops on such a road you will have to meet them at the foot of a hill, and the half-breeds facing it.' It is said my papers have been published. If they have been published examine what took place, and you will see we had to meet General Middleton at the foot of the hill. It was also told me that men would stay in the *belle prairie*, and the spirit spoke of those who would remain on the *belle prairie*, and there were men who remained on the *belle prairie*."

Medical Testimony.

Now these were the events of the trial itself, and apart altogether from the other evidence which is before us, although not official. There was, besides the evidence of the other medical witnesses. Dr. Clark was called and examined. He had examined Riel three times, had heard the evidence, and if he was not feigning, he was insane to the limit of irresponsibility. But it takes long to find out that a man is insane. Dr. Wallace, who, I believe, is the Superintendent of the Hamilton Lunatic Asylum, examined him once and

heard the evidence. He could only say that he did not find out—he might be insane. It takes long to find out whether a man is insane. Dr. Jukes, who was not a specialist, and was the police surgeon in charge of the prisoner, had never examined or tested him at all. He also says it takes a long time to find out, though he had not found out anything to show his insanity. *Now I do not, myself, believe that it can be at all seriously contended that this man was feigning. The old insanity had recurred. They were the same sort of views which he had expressed during the old insanity. He was most anxious to avoid the imputation of insanity and to this end he restrained himself at the trial, to a considerable extent in his expressions. He was artful in his insanity, as often happens, and what he wanted was to show that he was a genuine prophet. All the symptoms which are stated in cases of feigned insanity are symptoms which indicate that THIS MAN'S INSANITY WAS NOT FEIGNED.*

Taylor says :

"Insanity is frequently feigned by persons accused of criminal offences in order to procure an acquittal or discharge. In the first place, when this is suspected, it will be proper to enquire whether the party had any motive for feigning the malady. *It is necessary to remember that insanity is never assumed until after the commission of a crime and the actual detention of a criminal.* No one feigns insanity merely to avoid suspicion. In general, as in most cases of imposition, the part is over-acted—the person does either too much or too little, and he betrays himself by inconsistencies of conduct and language which are never met with in cases of real insanity. There is commonly some probable cause to which real insanity may be traced, but when the malady is feigned there is no apparent cause; in this case the appearance of the assumed insanity is always sudden; in the real malady the progress of the attack is generally gradual, and when the attack is really sudden, then it will be found to be due to some great moral shock, or other very obvious cause.

"We should observe whether there has been any marked change of character in the individual, or whether his conduct, when he had no interest to feign, was such as it is now observed to be."

The same learned author says :

"I am indebted to a learned judge for the following note on feigned insanity:—*'It may be safely held that a person feigning insanity will rarely if ever try to prove himself to be sane—*for he runs the great risk of satisfying others that he is sane—the conclusion he desires to avoid. *There is no better proof in general that the insanity (supposing other evidence of it to be strong) is real than in the keen and eager attempts by the accused to prove that he is sane, and strong and indignant remonstrance against being held to be insane, though that would protect himself against trial and punishment.* In one case, at Edinburgh, some doubt existed whether a party was feigning insanity, and some of those about him, and in charge of him in gaol, from his clearness and coherence, were satisfied that he was quite sane, and that what he exhibited was merely eccentricity, or simulated attempts to act as a mad man. Insane he certainly was beyond all doubt; but he fought the point of his sanity most bravely in court. He made very clear and quick remarks upon the evidence of the medical men, who had no doubt of his entire insanity; and when one physician of great experience with insane persons that he thought him quite incapable of giving information to counsel and agents for conducting his defence, he said instantly; 'Then, why did you advise me to apply to see counsel and agents?'"

Now, Sir, my clear conclusion from this evidence is that in the testimony at the trial there was overwhelming proof of great disorder of intellect, of insane delusions on religious and political topics, those very topics out of which the acts grew.

Degree of Riel's Insanity.

Now it is unnecessary to enquire for the purpose of the issue before us whether that disorder was so great as, by our law, to justify a verdict of not guilty on the ground of insanity. On that point minds will differ as to whether it was great enough or not. Assume if you please—and I think there is great force in the proposition—that, dealing with the verdict of the jury and with the judgment of the court in Manitoba, you may not unfairly argue that it was indicated strongly so far as the evidence at the trial went that he was not so irresponsible within the meaning of the law so as

to have a verdict of not guilty returned—though that conclusion would not accord with my own individual opinion—but assume that. Give the verdict all its just weight, omit the very strong point to which my hon. friend from East Quebec alluded, the evidence in the case of Jackson which I have read in the imperfect report we got in the newspapers, in which Dr. Jukes seems to have sworn that, with the exception of something said about his not speaking rationally all the while, his delusions were much the same as Riel's and on which evidence he was found insane—I say that *assuming, if you please, that the disorder was not so serious as to render the prisoner wholly irresponsible, so deciding you justify the verdict of guilty, and having justified the verdict of guilty, you by no means rid the Executive of very grave duties.*

Judicial Duties of the Government.

Now upon this question there are very serious errors largely prevailing in the public mind. It is common talk, and this House has not been wholly free from that common talk, that there should be no interference with the verdict or sentence in capital cases—talk, which if it were acted on, would render it impossible to maintain capital punishment on the Statute Book for twelve months in any civilised country. Now, I shall prove the errors of this view by statistics. The statistics of the administration of justice in England and Wales, during ten years before 1863, show that the proportion of convictions to committals for all classes of crimes taken together, was 70 to 71 per cent; and I may say that there is a curious run of similarity for many years in both England and Canada in that regard. But for murder during those ten years the proportion of convictions to committals was only 23½ per cent. or a little over one-third of the proportion in the general run. *While thus you find, in the first place, that a much smaller proportion of persons in proportion to those charged were convicted of murder than in the general run, you*

find the proportion of executions to the convictions for murder was but 60 per cent, and that 40 per cent. were commuted. In the 20 years from 1861 to 1880 there were 512 capital sentences for murder. Out of those there were only 279 executions, or 54½ per cent., and 233 not executed, or 45½ per cent. In the 5 years from 1880 to 1884 there were 168 capital sentences. Out of these only 80 executions took place, or 48 per cent., 88 were not executed, or 52 per cent. Thus there are now fewer executions in proportion to sentences than there were. In the first period I gave you there were something more than half, during the second period there were fewer but still a little more than half, but for the last available period *less than half those sentenced were executed.* Let me give you the individual cases which came before Mr. Justice Stephen in three years. He sentenced ten persons to death; four were executed, six commuted; four because the means by which they caused death were neither intended nor in themselves likely to cause death; in these cases, under an improved definition, the prisoners would have been found guilty of manslaughter; one, because after the conviction it appeared probable that he had received provocation, which might reduce the offence to manslaughter; one because the convict was subject to epileptic fits, which rendered her frequently unconscious and had permanently impaired her powers, though she was probably not insane at the moment. Judge Stephen had not the least doubt when he passed sentence as to the cases in which there would be commutation and execution. In France, by the evidence taken in 1864, the persons found guilty of murder in four years, from 1859 to 1862, were 1,368; of these 1,228, or nine-tenths, were found guilty with extenuating circumstances, leaving only 140 or one-tenth guilty, and liable to death. These were the very worst cases, yet of these about one-half only were executed and the rest were commuted. The English Commission on Capital Punishment state the custom in France as follows:—

“Whether the convict has or has not sued

for pardon or commutation of penalty, the case is always examined by a commission at the Ministry of Justice, and by the advice of this commission the execution either takes place or the penalty is commuted, unless the Emperor should take the initiative; his right of pardon has no limit.”

Now take Ontario and Quebec, in the four years, 1880 to 1883, according to the criminal statistics brought down by the hon. gentleman opposite, there were ninety-six persons charged with murder; twenty-six only were convicted or twenty-seven per cent., thirteen only were left for execution; every second sentence was commuted. During the same four years seventy per cent. of those charged with all crimes were convicted; and the commutations (including murder and second commutations of capital cases) were only one in 350, and of those many were due to ill-health. The result is that of 500 charged with all crimes 350 are convicted, and of these 349 or more suffer the sentence of the law, so that practically the sentence is executed in all these cases. But of 500 charged with murder only 135 are convicted instead of 350, the general average; of the 135 only 67 or 68 suffer the sentence of the law, or one out of two, instead of 349 out of 350 the general average. Of the 500 charged with murder only sixty seven are convicted, and suffer the sentence of the law, or less than twelve per cent. of the committals; while out of 500 charged with all crimes 349 or more are convicted and suffer the sentence of the law, or seventy per cent of the committals—nearly six times as many as in capital cases. What is the general result? The general result of these statistics is that in England, in France, in Ontario and Quebec there is a more careful sifting in the preliminary process before verdict in the capital cases than there is in the general average of crime. There is a greater reluctance to convict, there is a greater tendency to acquit, and so there is a very much smaller proportion of persons charged with that particular offence, the capital offence, who are convicted than of those who are charged with other offences. What follows? Is it that it is in the *residuum*, the worst cases

the plainest cases, the most obvious cases alone that conviction takes place, and after that preliminary sifting which results in the most obvious and plainest cases only leading to conviction in cases of charges of murder, yet while only one in 350 of all classes of sentences is commuted, in capital cases 175 out of 350 are commuted. Why is it that we do not interfere with other sentences, and yet we interfere to such an enormous extent with these particular sentences, capital sentences?

Reason for large proportion of Commutations to Death Sentence.

The reason is perfectly obvious. It is because there are various classes and degrees of moral guilt in the same legal offence having the same legal definition, and because in all other cases than cases of capital sentence the judge has a discretion to apportion the punishment to the particular circumstances of the case. He does so. He tempers justice with mercy himself; he considers the palliating circumstances; he considers among other things the state of mind and degree of responsibility; he exercises a wide discretion, he may have a right to commit a man for life or for one hour, for a long term of years or for a month. The law gives it to him because the law feels that in all these classes of cases, of larceny, of intent to commit murder, of assault, of what crime you will it is impossible to predicate the same degree of moral guilt, and therefore that it is essential to provide some machinery by which, to some extent, the punishment awarded shall be proportionate to the degree of guilt in the specific case. *But in capital cases there are not less—there are even more—shades of guilt than there are in other cases.* No one will dispute that; no one who has read the interesting but harrowing accounts of murder trials but must agree that there are all sorts and shades of guilt in the commission of that which, according to the law of the land, is yet always murder. And

yet in that particular case, the judge has not any discretion at all. He must pronounce the only sentence, the ultimate sentence, the maximum sentence, the sentence which is the worst and severest sentence now applied, not to all murderers, but to the worst murderers alone. But there is a discretion, notwithstanding. There is no reason why, in this particular case, there should not be somewhere that discretion which exists in other cases, not as a part of the prerogative of mercy, but as part of the administration of criminal justice, which in other cases is vested in the judge. *It is impossible to say that you should not find somewhere in the case of murder the discretion to apportion the punishment to the moral guilt, when you give it by your Statute Books in all the other cases in the land.* For reasons which I need not discuss, this discretion is not in capital cases vested in the judge. The reasons may be satisfactory or unsatisfactory; it is no matter, but in fact the discretion rests in capital cases, not with the judge, but with the Executive, and

IN THIS CASE THE MINISTERS DISCHARGE UNDER THE LAW OF THE LAND A DUTY WHICH IS PART OF THE ADMINISTRATION OF CRIMINAL JUSTICE, AND WHICH IN ALL OTHER CASES IS, UNDER THE LAW OF THE LAND, DISCHARGED BY THE JUDGE WHO TRIES THE CASE AND AWARDS THE SENTENCE.

They have combined and commingled also the prerogative of mercy strictly so called, as distinguished from this part of the administration of justice, the prerogative which they exercise with reference to all cases. If they think the judge's sentence too severe, they may—though I am glad to say the power is rarely exercised—commute the severe sentence of the judge. This is a distinct exercise of the prerogative of mercy, and in the capital cases they have, as a matter of course, to consider the two positions, and they are commonly considered together; the whole case and the circumstances are considered together. Now, I think I have shown you perfectly plainly and

perfectly clearly that there is the most marked distinction that can be conceived between the capital sentence and its execution and all other sentences and their execution. I might put it to you in another point of view, in this way: the case would be the same in kind, though not in degree, if your law, for all other crimes than the capital crimes, obliged the judge to award the maximum sentence which the law now awards for the particular crime. Then you would immediately have the Executive necessarily invaded with applications, as a branch of the administration of criminal justice. They would say: Your law has made no distinction at all, yet the moral guilt and the degree of responsibility varies, and in this case it is very light, and yet there is a twenty years' sentence; you must mitigate. This discretion the judge exercises now in all other cases. You accomplish this result by another operation in all cases of capital sentence. You do it by the operation of the Executive in the case of a capital sentence. Thus the capital sentence is not in the sense which has been applied to it, the sentence of the law with reference to the capital crime. It is the extreme sentence of the law. It is not the rule to execute that sentence. In Ontario and Quebec, as many sentences are commuted as are executed, and in England and Wales, more. There it is the exception to execute, and why? Because it is not fitting there any more than in other cases to apply as a rule the extreme, the maximum penalty of the law to this class of crimes.

Treason less Heinous than Murder.

Now, Sir, I have spoken up to this point of the capital offence of murder, because it is in practice—or was in practice until the 16th of November, in modern times—the only capital offence. The old law as to high treason, of course, remains, but milder views have long prevailed with reference to political offences. Since June, 1848, in England, and since a

later period here, the same offences precisely, the same character of offences may be, and since that time, as far as I know, have always been in England, tried under the milder Act as treason-felony in respect of which the maximum sentence is imprisonment for life. I do not mean that this observation applies to isolated act of murder which, are generally excluded from amnesties and are tried as such. If, therefore, there be any distinction with reference to the application of the general principles of the administration of criminal justice to which I have adverted and which I have established, if there be any distinction between murder and treason, it is not what has been intimated from the other side. It is not that your law is more severe in the case of treason; it is that your law is milder in the case of treason. It is that while you continue in the case of murder to provide only a machinery under which the sentence must be capital, yet you have provided in the case of treason, and you have used in every case in the North-West except one, a milder procedure, another law in respect to which the maximum penalty is imprisonment for life for the same offence. There is the distinction as is enshrined in the Statute Book in England and in Canada, and *you cannot from that make out this conclusion which hon. gentlemen opposite have made of treason as the highest crime.* I know there is a sense in which it may be so regarded. You may talk about the life of the State, the body politic, the corporation, and so on; but I think I shall show before I sit down how much there is in all that. The distinction, then, is that. Now, sir, I ask what more is to be said after this statement, of its being a duty on the part of the Executive to carry out the sentence of the law? I maintain that there is no duty on the part of the Executive, to leave the law to take its course when in this particular case, it is the maximum punishment which the law obliges the judge to award and when as I have shown as often as not, that maximum punishment is not inflicted.

In truth and in fact, disguise it how you will, in England, in France, in Canada, it is the Executive that awards the real sentence of the law in capital cases; and in this particular case the duty of the Executive was emphasised and enlarged by the special provision in North-West Territories Act, which having a due regard, or some regard, to the comparative weakness of the tribunal and the circumstances of the case, made a special provision under which the sentence was not to be executed until the pleasure of the Executive was known; which the learned Chief Justice of Manitoba described as providing in fact, three trials: First, before the judge and jury; secondly, before the court in Manitoba; and thirdly, before the court in Ottawa—the Executive of the country.

How the Prerogative of Mercy should be Exercised.

Now Sir, I propose to reinforce the position which I have taken as flowing inevitably from the statistics and the reasoning which I have given you, as to the principles and the practice of the exercise of what is called the prerogative of mercy; and first of all, let me deal with it in capital cases generally. I quote from the same learned authority to which I before referred, Sir James Stephen's work:

"The subject of the discretion exercised by the judges in common cases, and by the Executive Government (practically the Home Secretary) in capital cases appears to me to be little understood. As to this it must be remembered that it is practically impossible to lay down an inflexible rule by which the same punishment must in every case be inflicted in respect of every crime falling within a given definition, because the degrees of moral guilt and public danger involved in offences which bear the same name and fall under the same definition must of necessity vary. There must therefore be a discretion in all cases as to the punishment to be inflicted. This discretion must from the nature of the case be vested either in the judge who tries the case or in the Executive Government or in the two acting together.

"From the earliest period of our history to the present day the discretion in misdemeanor at common law has been vested in the judge.

* The cases which still continue to be capital—practically murder and treason—supply the only instances worth noticing in which the judge has no discretion. *The discretion in such cases is vested in the Secretary of State.*

"It was never intended that capital punishment should be inflicted whenever sentence of death was passed. Even when the criminal law was most severe the power of pardon was always regarded as supplementary to it, and as supplying that power of mitigating sentences of death which the words of the law refused. * * * *

"The power of pardon, in the exercise of which Her Majesty, advised by the Home Secretary, still remains unaltered, and in respect of capital sentences, it answers the purposes fulfilled in other cases by the discretionary power entrusted to the judges. The fact that the punishment of death is not inflicted in every case in which sentence of death is inflicted, proves nothing more than that murder, as well as other crimes, has its degrees, and that the extreme punishment which the law awards ought not to be carried out in all cases."

He says further:

"I am strongly of opinion that capital punishments should be retained and that they should be extended to some cases in which offenders are at present liable to them; but I am also of opinion that no definition which can ever be formed, will include all murders, for which the offender ought to be put to death and exclude all those for which secondary punishment would be sufficient.

"The most careful definition will cover crimes involving many different degrees, both of moral guilt and of public danger; moreover, those murders which involve the greatest public danger, may involve far less moral guilt than those which involve little public danger."

"The question of the necessary disproportions between gradations of crime and gradations of punishment is brought to the most perplexing issue in the case of the punishment of death. This punishment has the following characteristics as distinguished from all others: It admits in itself of no gradation; it is irrevocable; and it is more different in kind from all other punishments than they are from each other. * * * Murder is the offence to which the punishment of death is now almost universally restricted."

Then the Commission on Capital Punishment declared:

"There is one point upon which the witnesses whom we have examined are almost

unanimous, viz., that the power of directing sentence of death to be recorded should be restored to the judges. We think this change desirable."

What was that? There was a power for some time allowed the judge, instead of passing the sentence of death, to permit it to be recorded, which was equivalent to a reprieve, and was invariably followed by commutation thus granting to the judge some measure of that judicial discretion, which here is applied wholly by the Executive. Then if you deal with cases of political offence, as has already been pointed out, the severity of the law has been mitigated in France by the Constitution of 1848, which abolished the punishment of death *en matière politique*.

Extent of customary exercise of the prerogative.

Now, let me come to the mode and extent of the exercise of this prerogative in these cases. The Commission on Capital Punishment examined, among others, Mr. Walpole, the Home Secretary. Mr. Hardy asks him :

"Q. You have the Chancellor and other judges ; in addition to that, I think you will remember that in your own time there was one case in which it became very important to ascertain the facts with regard to the locality ?—A. Certainly.

"Q. And do you remember that you there authorized an intelligent person, upon the spot to have the distances measured to show whether they were in conformity with the evidence, which was impugned upon that ground ?—A. Certainly, I did."

So that you find that examinations of that kind took place where evidence given at the trial was impugned in order to test whether it was really accurate or not. Again, the Royal Commission on Indictable Offences, composed of the learned Judges Blackburn, Barry, Lush, and Stephen, report thus :

"Cases in which, under some peculiar state of facts, a miscarriage of justice takes place, may sometimes though rarely occur ; but when they occur it is under circumstances for which fixed rule of procedure cannot provide.

"*Experience has shown that the Secretary of State is a better judge of the existence of such circumstances than a court of justice can be. He has every facility for enquiring into the special circumstances ; he can and does, if necessary, avail himself of the assistance of the judge who tried the case, and of the law officers. The position which he occupies is a guarantee of his known fitness to form an opinion. He is fettered by no rule, and his decision does not form a precedent for subsequent cases. We do not see how a better means could be provided for inquiry into the circumstances of the exceptional cases in question. The powers of the Secretary of State, however, as to disposing of the cases which come before him are not as satisfactory as his power of inquiring into their circumstances. He can advise Her Majesty to remit or commute a sentence ; but, to say nothing of the inconsistency of pardoning a man may be unsatisfactory. The result of the inquiries of the Secretary of State may be to show, not that the convict is clearly innocent, but that the propriety of the conviction is doubtful ; that matters were left out of account which ought to have been considered ; or that too little importance was attached to a view of the case, the bearing of which was not sufficiently apprehended at the trial.*"

Rather extensive powers, Sir. Then, I refer to a series of authorities of the highest character, being mainly the explanations which have been given by successive Home Secretaries in the British Parliament, with reference to the discharge of their functions.

Opinions of British Home Secretaries.

In 1835, with regard to the Dorchester laborers, Lord Russell, then Home Secretary, said :

"What I have to say is, that in this case, as in any other that may be brought before me, whether in the House or out of it, I do not hold myself precluded from entering upon the consideration of any facts or circumstances that may come to my knowledge, or from forming a judgment upon them without reserve."

Lord Loughborough, who was at one time Chief Justice, said in the House of Lords :

"That he had tried prisoners who had been capitally convicted, and he had carefully examined and revised all the circumstances

of their cases without being able to find a single reason which would justify his recommending mercy to be extended to them, and he had reported to the Government that he did not think himself warranted in saying that they were entitled to favorable consideration, *and yet mercy had been extended to them more than once, and, he verily believed, on fair and just principles.*"

Sir Geo. Grey, Home Secretary, said :

"I cannot accept the doctrine of the hon. member, that the Secretary of State is bound to consider the verdict of a jury in a capital case as absolutely final, and to refuse to investigate any alleged facts which may be stated to him tending to alter the view of the case submitted to the judge and jury. The duty of a Secretary of State would be easy if in all cases he refused to receive any appeal for mercy founded upon facts not stated at the trial. But he cannot shrink from the performance of the duty which is now imposed upon him however painful it may be ; if he did his conduct would meet with universal condemnation."

Mr. Home Secretary Walpole said that a murder referred to was one of aggravated enormity and barbarity ; yet the sentence was commuted. Again Mr. Gathorne Hardy, Home Secretary, said :

"After the trial and condemnation facts might come out which it would be desirable to sift ; and however long it might be after a man's conviction, if circumstances transpired showing that the conviction was unjust, or throwing such a doubt on it as to make it clear that there ought to be some interference, there must necessarily be some authority to exercise the prerogative of mercy."

Mr. Home Secretary Walpole said :

"Do not it be supposed that I think that the Home Secretary has not a very large power vested in him of advising the Crown to exercise its prerogative of mercy. I think there is such a power vested in him, not for the purpose of re-hearing a case which can only be properly reheard before a judge and jury, but for the purpose of taking into consideration, not only the facts proved at the trial, but any other facts and circumstances that may be brought to light subsequently, of weighing them, and of determining whether, under all the circumstances, it is his duty to recommend the Crown to exercise its prerogative of mercy, and to mitigate the severity of punishment. In no case, however, should he interfere against the decision both of judge and jury, unless the case

is so plain as to leave no reasonable doubt on the mind of any intelligent man that a great injustice had been done."

Mr. Gathorne Hardy, Home Secretary, said :

"Certainly, in this instance, the jury did not neglect their duty, but found a verdict of 'wilful murder' in a case which was undoubtedly one of wilful murder according to the law of this country. As far as I am concerned in this transaction, I have no hesitation in explaining all that has taken place in regard to it. * * The memorial was sent down to the judge, and by return of post I received an answer in which the judge recommended that the sentence of death should be commuted to penal servitude."

And it was commuted. On the Bill to abolish capital punishment which came up in 1869, Mr. Secretary Bruce, said :

"He would undertake to say that the law (as to capital punishment) could not exist at all were it not for the large discretionary power entrusted to the Home Secretary, which devolved upon him duties, not only of the most difficult, but of the most painful character. * * *

"It was hard, for instance, to justify the continued existence of a law under which it was not merely in the power, but became absolutely the duty of the Secretary of State to remit sentences of death solemnly passed by a judge after verdict found by a jury. In accordance with long tradition in his office, it was the duty of the Home Secretary to remit the extreme sentence in all cases of infanticide. Another custom which had grown to be invariable—at least he had not been able to find a single exception—was that no sentence of death was ever inflicted in a case where, in the opinion of the judge, it ought not to be inflicted. Everybody acquainted with the subject, must be aware that after every assize there were judges who hastened to inform the Home Secretary, that although, according to the definition of law, the jury had been right in finding the prisoner guilty of murder, and although the judge was himself bound to pass sentence of death, yet, in his opinion, that sentence ought not to be carried into execution. Then no inconsiderable number of cases arose where the judge passed sentence of death, himself disagreeing with the jury. In the two latter classes of cases, the Home Secretary, whether he agreed with the opinion of the judge or not, was bound, according to the practice, to abandon his own

opinion and act upon that of the judge—morally bound, he meant, of course, for there was no legal obligation resting upon him beyond the precedents invariably recognised by his predecessors.”

Mr. Bruce again said:

“A third class of cases, extremely difficult to deal with, and exposing the holder of the office to comments, harsh and very frequently unjust, was when fresh evidence arose after the conviction of the offender, and he must say that, in his opinion, this was the weakest part of our present system, and one deserving the most serious consideration of the Legislature. The case was that of a very poor class of persons, who either where unable to obtain legal assistance, or from their position or perhaps from their previous character, excited but little sympathy in the neighborhood, and facts which might have told in their favor were not brought out till the consciences of those acquainted with those facts were aroused by the impending death of the convicts. Cases such as these were by no means infrequent. In his short experience he had already had two or three signal instances in which evidence of the most unbounded importance had been kept back, either from want of means on the part of the prisoner to have his case properly investigated, or from want of interest on the part of those by whom the evidence could be given.”

Then on the remission of capital punishment Mr. Bruce said:

“It is well that the House and country should understand how in the cases, which so often offend the honest opinion of the public, there is apparent discrepancy between the opinion of judge and jury on the one hand and that of the Home Secretary on the other. It arises from this—that the jury is obliged to find, from the direction of the judge, a verdict of wilful murder, and that the judge is constantly required to pass a sentence of death, when it is quite certain it will not, cannot, ought not, to be executed. * * * Such is the state of the law, and so long as it is the state of the law it is absolutely impossible but that the decision of the Secretary of State must occasionally be in disaccord with the finding of the jury and the sentence of the judge.”

On another occasion, he said:

“I may here mention another case which was brought under my notice more recently. A prisoner was entirely undefended, not a palliative circumstance was adduced on his

trial for murder, and he was consequently convicted and sentenced to death; but other evidence was afterwards brought forward which, in the opinion of the judge, would, if laid before the jury, have turned the scale in favor of the prisoner and shown that he was guilty of manslaughter instead of murder.”

Mr. Bruce says again:

“While the law respecting murder remains as it is, and while the spectacle is so often seen of judges and juries dissenting—the one from the verdict and the other from the sentence which, in accordance with law, they are obliged to pass—there must be lodged somewhere the power of administering the prerogative of mercy.”

Lord Penzance says:

“Now, independently of the cases in which the punishment of death has been commuted, it has, I believe, been the practice for many years of the Home Office to mitigate to severe sentences.”

Mr. Trevelyan, Irish Secretary, said:

“I am glad to have an opportunity of saying a word about the Kilmartin case. If His Excellency erred at all in that case, he erred on the right side. In the last paragraph of his letter it is stated:

“His Excellency has determined to release Kilmartin. He does so without impeaching the correctness of the original conviction, or the *bona fides* of Hernon; but subsequent information having created some doubt as to the identification of Kilmartin, His Excellency feels himself enabled to exercise the prerogative of mercy on Kilmartin’s behalf.”

So late as 1884, Mr. Gladstone, in a great debate to which I shall have occasion subsequently to allude, said this:

“The constitution of this country knows nothing of criminal appeal, properly so called, nothing of the retrial of cases, as was explained by the Home Secretary last night. It knows of the reference to the responsible Minister, who, surrounded by the very best advisers, and acting under the deepest sense of responsibility, is entitled to exercise the prerogative of mercy. That mode of operation you begin by excluding, because what you are asking for is not a further investigation of the question by the responsible officer of the Queen, but it is a full and public enquiry, a description to which his operation could not correspond.”

What should be the Effect of a Recommendation to Mercy?

I think I have sufficiently established the accuracy of my statement, and enlarged even my own statement by these proofs of the extensive powers and consequential duties of the Executive in exercising this branch of the administration of criminal justice, particularly in capital cases; but before I pass to the question of what should be done in cases of insanity and the specialties of those cases, I wish to make an allusion, at this point, to the effect of the recommendation to mercy. The hon. member from Ottawa, quoted a portion of a passage, which I deem it my duty to read, from Sir James Stephen's book :

"There is one other point on which the English and French systems are strongly contrasted. This is the French system of *circonstances atténuantes* and the English system of recommendations to mercy. The finding of *circonstances atténuantes* by a French jury ties the hands of the court and compels them to pass a lighter sentence than they otherwise would be entitled to pass. It gives a permanent legal effect to the first impressions of seven out of twelve altogether irresponsible persons upon the most delicate of all questions connected with the administration of justice—the amount of punishment which, having regard to its moral enormity and also to its political and social danger, ought to be awarded to a given offence. These are I think matters which require mature and deliberate considerations by the persons best qualified by their position and their previous training to decide upon them. In all cases not capital the discretion is by our law vested in the judges. In capital cases it is practically vested in the Secretary for the Home Department advised by the judge, and inasmuch as such questions always attract great public interest and attention and are often widely discussed by the press, there is little fear that full justice will not be done. To put such a power into the hands of seven jurymen to be exercised irrevocably upon a first impression is not only to deprive the public of any opportunity to influence a decision in which it is deeply interested.

"Jurymen having given their decision disappear from public notice, their very names being unknown. A Secretary of State or a judge is known to every one, and may be made the mark of the most searching criti-

cism, to say nothing of the political consequences which in the case of a Secretary of State may arise from mistakes in the discharge of his duty. On the other hand one English system allows the jury to exercise at least as much influence on the degree of punishment to be inflicted on those whom they may convict as they ought to have. It is true that the recommendation to mercy of an English jury has no legal effect and is no part of their verdict, but it is invariably considered with attention and is generally effective.

"In cases where the judge has a discretion as to sentence, he always makes it lighter when the jury recommend the prisoner to mercy. In capital cases, where he has no discretion, he invariably in practice informs the Home Secretary at once of the recommendation, and it is frequently, perhaps generally, followed by a commutation of the sentence. This seems to me infinitely preferable to the system of *circonstances atténuantes*. Though the impression of a jury ought always to be respectfully considered, it is often founded on mistaken grounds, and is sometimes a compromise. It is usual to ask the reason of the recommendation, and I have known at least one case in which this was followed first by silence and then by withdrawal of their commendation. I have also known cases in which the judge said: 'Gentlemen, you would hardly have recommended this man to mercy if you had known as I do that he has been repeatedly convicted of similar offences.' There are also cases in which the recommendation is obviously founded on a doubt of the prisoner's guilt, and in such cases I have known the judge tell the jury that they ought to reconsider the matter, and either acquit or convict simply, the prisoner being entitled to an acquittal if the doubt seems to the jury reasonable. This will often lead to an acquittal."

Then I refer to two cases in which Home Secretaries have expressed their views on the subject. In the case of the convict Wager, Mr. Walpole said :

"His first impression was that it was a case of such barbarity and cruelty that it was proper that the law should take its course. On the other hand, he found that the jury recommended the criminal to mercy. Moreover, he felt that in this, as in all similar cases, it was his duty to appeal to the judge who tried the criminal, and he did so without intimating any opinion one way or the other. The learned judge had twice favored him with his opinion, and he would read a portion of the report. It was as follows :

"The murder was not premeditated, and I do not think when he commenced the pursuit of his wife he intended that act of violence which he afterwards made use of. I am, therefore, of the opinion that the case is not an unfit one for the exercise of the prerogative of mercy.

"After the recommendation of the jury, expressed not only at the time when the verdict was given, but since conveyed to him in stronger language than the original recommendation was couched in; and after the deliberate opinion of the judge that the case was, in his opinion, not unfit for the exercise of the prerogative of mercy, he did not think that he could have taken any other course than the one he had adopted, and the sentence was commuted to penal servitude for life."

In another case, the case of John Toomer, the same Home Secretary said :

"Perhaps, upon this point, I shall not transgress my duty by saying that from the very beginning I thought the punishment to which Toomer was sentenced was so severe that it ought not to stand. I never had the slightest hesitation upon that point, but that question has never been brought before me. The reason why I thought the punishment ought not to stand was, because I felt that the jury's recommendation to mercy, founded probably upon some indiscretion of the prosecutrix, should have been attended to."

Now, I ventured to observe, on the only occasion on which I have spoken in public on this case until to-day, that it was a matter of regret that the jury were not asked to state what their reason was for the recommendation—I do not mean by the Executive, of course, but by the judge at the trial, as it was fitting that he should have done. We had some public information given to us from a source which I suppose hon. gentlemen will not challenge as distinctly unfriendly to them, or as being biassed in any way against them.

Meaning of the Riel Jury's Recommendation.

At the time of the trial, the *Mail* correspondent at that trial telegraphed to the *Mail* newspaper as follows :

"REGINA, N.W.T., 3rd August—Three of the jurors in Riel's case tell me that the meaning of the recommendation to mercy is

that in their opinion Riel should not be hanged, as they think that, while he is not absolutely insane in the ordinary accepted meaning of the word, he is a very decided 'crank'. The other three jurors I have not been able to see, but this is their view also. Most of the witnesses for the Crown admitted on cross-examination that Riel, in their estimation, was 'not all there'; and this, with the testimony of the experts, and that of Rev. Father André, of Prince Albert, who fought with might and main against Riel during the agitation which culminated in the rebellion, produced a profound impression upon the minds of the jury. Lastly, the jury saw and heard the prisoner in the box."

That was the only information which, at the time I spoke, I had as to the meaning of the recommendation. A gentleman residing in the North-West, with whom I had no acquaintance, wrote to me, stating that he had seen the statement made that it was not known what the meaning of the recommendation was, and he enclosed to me a letter addressed to himself from one of the jury, which I think it necessary to give to the House as the only information I have had since on the subject, given to me without any solicitation on my part, and simply coming in the way I have stated. That letter is as follows :

"MY DEAR SIR,—In answer to your enquiries regarding our verdict, &c., in the Riel trial, I would say that as a friend I have no objections whatever to giving you our reasons for recommending the prisoner to the mercy of the Crown, but I would ask you as a favor not to make public my name or residence.

"The judge, in his charge, told us distinctly that we must take into consideration these two points, the prisoner's implication in the rebellion and the state of his mind at the time. He said : 'If you are perfectly satisfied in your own mind that the prisoner was implicated in the rebellion, directly or indirectly, and at the same time able to distinguish between right and wrong, you must bring him in guilty; if, on the other hand, you find him implicated in the rebellion, but of an unsound mind, you must bring him in not guilty, and state, on account of his insanity.' This was the purport of the charge, although by no means the whole of it.

"After we had retired to consider the verdict, our foreman asked each and every one

of us the following questions:—"Is the prisoner guilty or not guilty? and, is he sane or insane." We each answered in our turn, Guilty and perfectly sane."

"In recommending him to the mercy of the court, we did so because we considered that while the prisoner was guilty and *we could not by any means justify him in his acts of rebellion, at the same time we felt that had the Government done their duty and redressed the grievances of the half-breeds of the Saskatchewan, as they had been requested time and again to do, there never would have been a second Riel rebellion, and consequently no prisoner to try and condemn.* We could not but condemn in the strongest terms possible the extraordinary dilatoriness of Sir John Macdonald, Sir David McPherson and Lieutenant-Governor Dewdney, and I firmly believe that **HAD THESE THREE BEEN ON TRIAL AS ACCESSORIES, VERY LITTLE MERCY, IF ANY, WOULD HAVE BEEN SHOWN THEM BY THE JURY.** * * *

"Although I say we, in nearly every case in the above, it may possibly be that not everyone held the same views as myself, but I certainly thought at the time that they did so, and am still of the same opinion.

"You are at perfect liberty to make use of this letter in any way you see fit, provided anything therein relating to myself is not made public."

I have given everything which does not relate to himself, and which bears upon this case at all. I thought it my duty to read that letter particularly, because, having in my hand the statement from one of the jury that the jury thought the prisoner sane, I did not think it would be consistent with the frankness I owe to the House to withhold that, inasmuch as they will see it is not a view which I myself share. I repeat that I do not at all contend that a recommendation to mercy is necessarily to be yielded to. I have never said so or thought so. I think that would be a still more unsatisfactory mode of dealing with the case than the French system. But I do argue that the statement given in the author whom I have quoted is a fair statement of the general results and of the degree of attention which is proper to be given to a recommendation to mercy; and if the hon. member for Ottawa (Mr. Mackintosh), who seems to have had special opportuni-

ties of investigating the cases of the exercise of the prerogative of mercy for several years past, opportunities not vouchsafed to other hon. gentlemen, had extended his inquiries and had gone into those cases in which the recommendation to mercy was effectual, instead of confining himself to those in which it was ineffectual, I think he would have given us an array of facts more important and more satisfactory than the representation of only one side which he has given us. The question is in what cases, and in what classes of cases the recommendation has been made, and what degree of weight has been given to it.

Proper Exercise of Prerogative in Cases of Insanity.

I turn to the question, so far as it may be illustrated by authority, of the exercise of mercy in those cases in which the defence of insanity arises, and upon that subject, no less a learned judge than Lord Cranworth was examined by the Capital Punishment Commission, in 1865, and the Attorney-General for Ireland put to him this statement:

"I happen to know a recent case where a man was tried, and the defence was insanity—incapacity to judge of his actions. The jury convicted this man; not believing that he was insane. The Executive subsequently received information from various doctors who had not been produced, showing that the man really was insane, and in that case the prerogative of mercy was exercised, the man being retained in prison."

And the answer was:

"That would be the reasonable mode of dealing with him."

So you see that where the question of insanity was raised at the trial, and where the jury decided against it, and where the Executive, upon the evidence given at the trial and before them, did not think they were wrong—and where of course the judge was not dissatisfied with the verdict either—yet where subsequent medical testimony was brought forward it was acted upon by the Executive and they commuted upon the score of the subsequent medical testimony, and there-

fore they received it. Now then, on the Bill to abolish capital punishment in 1869, the Home Secretary, Bruce, said :

"One of the first cases he had to adjudicate upon was that of the convict Bisgrove, the circumstances of the murder being such as in themselves to excite suspicion of insanity. No evidence was adduced before the court as to the previous life of this unhappy man ; but after sentence had been passed the conscience of the neighborhood was aroused, and information was given which led to the discovery of what the facts really were viz., that for three years he had been subject to fits of epilepsy, and while quite peaceable at other times, under the influence of these he was dangerous, so much so that he had been dismissed from one employment. With a knowledge of these facts, it was impossible to allow the sentence of death to be carried out, and the result of two medical examinations since instituted at different places, and conducted by most competent persons, established that the prisoner was actually insane."

So you see subsequent evidence of the facts was received by the Executive and upon that subsequent evidence they started separate medical examinations, conducted at different places, to test the condition. Their report was accepted, and upon it the prisoner's sentence was commuted. Then Mr. Gilpin said, in the same debate :

"The Home Secretary himself stated, only a few weeks ago, that at the last spring assizes two persons were sentenced to death who were intirely innocent. Mr. Bruce, Home Secretary said, the one was innocent and the other insane."

So that an innocent person had been sentenced to death, but his sentence had been afterwards commuted on the ground that he was insane. Then Mr. Bruce, in 1870, in the case of Jacob Spinasa, said,

"A murder was committed, for which no motive could be assigned, by a person who was apparently laboring under some temporary and violent hallucination. The judge and jury, however, thought there was not sufficient evidence of this state of mind, and therefore they treated the prisoner as a man who had committed a murder, with a full knowledge of what he was doing. After the trial evidence was given upon oath in Switzerland by a surgeon who had repeatedly attended Spinasa while he was in militia

regiment, and who had seen him in a state of hallucination similar to that described at the trial, and accompanied by acts of violence, of which he was unconscious. Then it was proved that persons in a German hospital in London had seen him under similar circumstances."

Thus the sentence was commuted on the score of these subsequent enquiries in a case in which proof of hallucination had been given at a trial, after which proof both judge and jury agreed that the prisoner was, within the law, responsible and properly convicted. Then, on the motion by Lord Penzance, the Lord Chancellor, speaking of the character of the enquiries which were made by the Home Secretary, said this :

"In particular cases other matters are inquired into, but those cases are extremely few. In some of them the delicate and difficult question of the state of the criminal's mind is raised, in which experience proves there is obviously a large margin for difference of opinion ; but this would not be improved by requiring all evidence to be on oath, for on matters of opinion there will always be great variety of opinion, and the oath will be no security, because a man giving his opinion may honestly swear that he believes so and so. Certificates, therefore, are just as valuable whether they are on oath or not ; and the only other evidence is that occasionally given by friends and relatives, as to the convict's state of mind at former periods—matters which are not of such difficult solution as may at first appear."

At present the functionary to whom this duty is confided, having ample assistance, is able to consider this subject without delay. He is, moreover, a responsible Minister of the Crown, and is, therefore, accountable to Parliament for the manner in which he discharges his duties."

There you find the responsibility of the Government declared by the Lord Chancellor, the head of the judiciary and the legal official of the Government, who explains what is done in criminal cases where a man has been convicted and sentenced ; and a question exists as to the state of his mind. You find that an inquiry is made, that medical opinions are taken, and evidence is taken as to the facts from which conclusions are to be drawn. Then the Royal Commission on Indictable

Offences in 1878, composed as I said before, of Judges Blackburn, Barry, Lush and Stephen, said :

"It must be borne in mind, that, although insanity is a defence which is applicable to any criminal charge, it is most frequently put forward in trials for murder, and for this offence the law—and we think wisely—awards upon conviction a fixed punishment which the judge has no power to mitigate. In the case of any other offence, if it should appear that the offender was afflicted with some unsoundness of mind, but not to such a degree as to render him irresponsible—in other words where the criminal element predominates, though mixed in a greater or less degree with the insane element—the judge can apportion the punishment to the degree of criminality, making allowance for the weakened or disordered intellect. But in a case of murder this can only be done by an appeal to the Executive : and we are of opinion that this difficulty cannot be successfully avoided by any definition of insanity which would be both safe and practicable, and that many cases must occur which cannot be satisfactorily dealt with otherwise than by such an appeal."

Now this is stated at a late day by men of the highest authority, having had the advantage of the evidence of many learned men engaged in the actual administration of the criminal law, declaring the theory and practice of that administration in cases in which there is a weak or disordered intellect, though not so weak or disordered as to justify a verdict of not guilty on the ground of insanity ; and in language in which I would only weaken by attempting to restate the argument, they point out

What common sense and common humanity approve,

that a weak and disordered intellect, although there may be enough to leave a man responsible, leaves him not responsible to the same degree as to the severity of punishment, as if he were of perfectly sound mind ; and that while in all other cases by the law the precise sentence proper to be awarded as proportioned to the moral guilt and to the palliative circumstances, is fixed by the judge, in the particular case in which the sentence is that of death, that duty is dis-

charged by the Executive. Sir James Stephen, in his book to which I have so frequently alluded, alluding to the provision for recording sentences which as I have said had the effect of a reprieve, says :

"I remember a case in which Mr. Justice Wightman ordered sentence of death to be recorded upon a conviction for murder. *The prisoner, though not quite mad enough to be acquitted, was obviously too mad to be hanged.* I have met with cases in which I wished I had a similar power."

Mr. Stephen in the same book says :

"These considerations appear to me to show that murder, however accurately defined, must always admit of degrees of guilt, and it seems to me to follow that some discretion in regard to punishment ought to be provided in this and in nearly every other case. This discretion does in fact exist at present and is exercised by the Home Secretary, though on every conviction of murder sentence of death is passed by the judge."

Then he gives cases affecting the guilt of such an offence :

- (1.) Absence of positive intention to kill, &c.
- (2.) Provocation, &c.
- (3.) There are many cases in which a man's mind is more or less affected by disease, but in which it cannot be said that he is entitled to be altogether acquitted on the ground of insanity."

And then he gives a long series of other cases, the precise case to which I allude, being number three, proving demonstratively that this case was recognised by our law, which else would be a barbarous and inhuman law, and that it justifies the principle of dealing with the case according to the circumstances. Then Lord Penzance, during a debate in the House of Lords in 1870, said :

"Well, the Home Secretary does as much as any man can do, under the circumstances. He makes his inquiry. It very often happens that the crime is one which depends on scientific evidence, as in the case of poisoning and then he has often a very delicate task. In other cases new and additional facts are alleged ; but there are no authorised sources of information. I believe, indeed, that he sometimes sends down persons to make inquiries on the spot."

Then Sir James Stephen in his book, speaking as to the doubts thrown on the justice of a verdict, or the accuracy of the evidence, and the course of the Home Secretary in Smethurst's case says :

"Sir George Lewis, Home Secretary, states : I have come to the conclusion that there is sufficient doubt of the prisoner's guilt to render it my duty to advise the grant of a free pardon.

The necessity which I have felt for advising Her Majesty to grant a free pardon in this case has not, as it appears to me, arisen from any defect in the constitution or proceedings of our criminal tribunals ; it has arisen from the imperfections of medical science, and from fallibility of the judgment in an obscure malady, even of skilful and experienced practitioners."

I am unable to deal with some of the cases in our own country as fully as the hon. member for Ottawa (Mr. Mackintosh) but I observe a report in the *Mail* newspaper of

A trial that took place in October, 1882, at Napanee.

One Lee was tried for murder and the defence was insanity. The medical evidence was conflicting. One doctor proved that he had examined the prisoner and he was in his opinion insane, and insanity was not feigned. Another doctor was called and said he had come to the same conclusion. The gaol surgeon thought the examination disclosed delusions, and he saw indications of insanity. Another doctor thought the prisoner was acting a part and knew quite well that he was doing. The judge charged that the evidence showed that his mind was, perhaps not very strong, although some years ago he had labored under delusions. At and about the date of the crime. Persons who were in frequent intercourse with him discovered nothing to lead them to suppose him of unsound mind. A person taking revenge is not acting under delusion ; he is doing it with some degree of knowledge of the difference between right and wrong. There was a verdict of guilty rendered, and there is no report of a recommendation for mercy. The judge in passing sentence said that after

hearing all the evidence he was quite of opinion that at the time the prisoner committed the crime he knew what he was doing and was perfectly accountable for his action. He was sentenced to death. That sentence was commuted. It was commuted by hon. gentlemen opposite. I am not able to speak with authority as to the circumstances of the commutation ; and I state simply that I received a letter on the case this morning, and therefore too late to enable me to apply to the hon. gentleman, as I otherwise would have done, to bring down the papers, but I now make the application. The letter is written by a respectable person who ought to know and who professes to know as to the circumstances which preceded that commutation. But before I refer further to that letter, I should like to give the reporter's account of the prisoner as published in the *Mail* :

"The prisoner whose appearance is not such as to give the unprofessional eye much, if any, indication of insanity has watched apparently with much interest throughout. He seemed to understand about what evidence each witness called would give, and it could be noticed as some of the more important ones came to the stand that he placed himself in an attitude of close attention as if to catch every word said. He did not at any time display indifference, and toward the close though showing signs of weariness seemed to take, if possible, more interest than at first and to be in a measure impressed with a sense of his peril. In this respect there was a visible change in his countenance after he heard the address of the Crown counsel and the judge's charge, and a very marked one when the verdict was rendered."

The information communicated to me by letter this morning is as follows : When the trial of Michael Lee for murder took place at Napanee some time ago, Dr. Metcalf, of Rockwood, Dr. Clark, of Toronto, Dr. Lavell, of Kingston, examined him. Drs. Metcalf and Clark pronounced him insane ; Dr. Lavell pronounced him perfectly sane. His sentence was commuted and he was sent to the penitentiary, where he was transferred to the criminal insane ward as insanity became marked. Whether he still remains there or not I do not know. I

know, having had some reason to learn, that a very great number of those whose minds are disordered are kept, and perhaps not unwisely so, out of the insane ward and mix with the other prisoners. That is the statement given to me; and I think, considering the circumstances and the names I have given, it would have been fortunate if the hon. gentleman for Ottawa had so far perfected his investigation as to be able to state all the facts respecting the case of Lee.

Summary of what has now been provided.

I think it is established beyond all contradiction that the practice accords with reason, that a disordered condition of the intellect, which in the view rightly or wrongly of the law is not sufficiently disordered to entitle the prisoner to immunity from crime, is yet regarded in dealing with the quantity of punishment awarded; that in all other cases than the capital cases that regard is paid by the judge, and in the capital cases it is to be paid by the Executive, whose duty is, not as a matter of clemency or mercy simply, but as part of the administration of criminal justice, as part of that justice which we declare in our Statute Books we seek to accomplish by the apportionment of the punishment to the moral guilt, to have regard to what surely must be an element of the moral guilt, the degree of the disordered intellect, the degree of the insane impulses, of the insane delusions of the unbalanced mind. Even although this degree may be not enough to entitle him to acquittal, though the verdict may be right and the judge's sentence under the law may be right, there is not a mere discretion but a sacred, solemn and imperative duty to have regard to the circumstances disclosed on the trial, and all other circumstances which may be made known, and if upon the whole of the circumstances, you find, as was said by Mr. Justice Stephen, that the man was not mad enough to be acquitted but too mad to be hanged, you cannot shelter yourself under the propo-

sition that it was your duty to carry out the sentence of the law, and that the verdict of the jury had settled all that matter. *The verdict of the jury settled no more than this; the prisoner was not so completely insane as to be entitled to be absolutely acquitted on the ground of insanity. Consistently with that finding, his intellect might be seriously disordered.* He might be seriously disordered mentally though not sufficiently disordered to give him immunity. Is not that question to be decided? Was that question settled by the verdict? No, it was left unsettled. It was to be settled by the Executive. Has it been settled? If not, they did not discharge their duty. If they settled it, and decided that it did not apply in this case, then I humbly say that I wholly disagree from them in opinion.

The Question of Political Offences.

Now, Sir, to come to the other branch of this case, the question of political offences, that has also to be considered on the question of the award of punishment, and in this matter I am obliged to differ very much from the spirit of a good deal that has been said by hon. gentlemen opposite. The prerogative of pardon is dealt with by Mr. Amos, as applied to these cases, thus:

"There are other cases in which the faculty of granting a remission or diminution of the penalty may also properly belong to the Executive. Thus in cases of what are sometimes called 'political crimes' in which the perpetrators of them are as often as not persons of virtuous habits and tendencies, and even in some cases of a heroic spirit of self-sacrifices, it must depend entirely upon the danger to the community to be apprehended from a repetition of such particular offences whether any and what penalty should be exacted. It may not be wise to leave to the judge the supreme decision of a question more of political circumspection than of simple moral insight. The usual if not necessary rule is to leave a considerable amount of choice of penalties to the judge, but to reserve to the Executive the opportunity of entirely rebutting, or as political sagacity prompts from time to time the penalty exacted by

the strict letter of the law. *These remarks while justifying the institution of the prerogative of pardon, none the less point to the essential importance of hedging round the exercise of this prerogative with all the safeguards which a vigilant legislature and an active public opinion can devise."*

With reference to the exercise of the prerogative in case of political offences, an instructive statement was made on the application in

The case of certain Fenian Convicts.

of 1869, when Sir Frederick Heygate said :

"He would beg to ask the Chief Secretary for Ireland, whether, in the selection of those Fenian convicts now proposed to the released, the course had been adopted usual in the remission of sentences of obtaining the approval of the judges who tried each case.

"Mr. Chichester Fortescue, in reply, said, that in ordinary cases when a memorial was presented from a prisoner for a mitigation of punishment or a free pardon, that memorial was referred to the judge who tried the case. But in the present instance no such memorial had been received by the Government and the question was not considered as one respecting a mitigation of an ordinary sentence. On the contrary, it was regarded by the Government as a question to be decided by themselves and by the Lord Lieutenant of Ireland. What they did was to institute a most rigid examination into the case of each prisoner, and in conducting that examination they had the assistance of the law officers of the Crown, and more especially of the Attorney-General. The examination was conducted in every case in reference to the character of the persons and the circumstances of the case, and to all that came out of the trial. Having done that, Her Majesty's Government and the Lord Lieutenant were of opinion that it was their duty to decide the question solely on their own responsibility, and without inviting the judges to share that responsibility."

Then, Sir there is a most interesting and instructive discussion on Mr. O'Connor Power's motion, in 1877, with reference to certain Fenian convicts, notably.

The Manchester Murderers,

of whom three suffered the extreme sentence of the law, and the others sentences of imprisonment for considerable terms ;

and after a period, an agitation took place for a remission of these sentences. Mr. Gathorne Hardy said :

"He would admit that this question came very near the hearts of a great many of the Irish people; but they were not the Irish nation and the Irish nation was not the whole people of the empire. This was an empire and not an aggregate of separate kingdoms, and the Government had to consider the interests of the whole of this great empire. It was also a free empire. Every man who was wronged had the opportunity of bringing his wrong to light, and there was no man who suffered an injury who had not an opportunity of obtaining redress in a constitutional manner. Therefore, the man who took up arms had to vindicate himself from a charge of the deepest dye. Where there was no necessity—not even an excuse—for shedding blood, the man who raised his arm to shed blood, committed a crime; and for that crime the country had a right to demand, he would not say vengeance, but utmost punishment the law allowed. Much more when men who had taken upon themselves the character of defenders of the country, violated the oaths they had taken and conspired to destroy the country, no punishment could be inflicted upon them which they did not deserve."

Then the Attorney-General of England, in the same debate, describing the offences, used these words :

"When the van emerged from under a railway arch, about half-a-mile from Bellevue, a large number of persons were seen upon some vacant ground, slightly elevated above the road. They were armed with revolvers, and had evidently been waiting for the approach of the van, determined to all hazards to rescue the prisoners. It was proved afterwards that messages had been sent in order that they might be prepared. They discharged their revolvers at the policemen, stopped and surrounded the van, and some of them got on the roof and attempted to break it in by means of hammers, while others handed up large stones to aid them. Others, again, tried to break open the door. It was the duty of Sergeant Brett to guard the door. He was a brave officer, and he did his duty. He positively refused to admit the assailants. When he was in the act of closing a ventilator—which was something in the shape of a small venetian blind—for the purpose probably of preventing them from getting a hold there, one of the conspirators pointed a revolver at the aperture, and, deliberately dis-

charging it, shot the officer. Sergeant Brett fell in the van, the door was then broken open, and the prisoners were released. Hon. members might, if they liked, call that accidental shooting, but he (Attorney-General) called it deliberate homicide.

* * * They might call it a technical crime; but he called it vulgar murder. They might call it a political offence; he called it deliberate and atrocious assassination. It was a deliberate planned attack, carried out by the prisoners who were afterwards convicted, regardless whether they committed murder or not, but determined to do murder rather than fail in their object."

Mr. Pease, the member I think for South Durham said :

"Well they had had a real rebellion some years ago in Ireland, headed by a gentleman who sat for many years in that House, and was highly respected by all who knew him—he alluded to Mr. Smith O'Brien. He was taken while in arms, holding a cottage some hours against the Queen's soldiers; and, in that extreme case, when the offender was actually convicted of treason, and formally sentenced to be hanged, drawn and quartered, the dread sentence was afterwards commuted to 14 years' banishment, and was afterwards again commuted, and Mr. Smith O'Brien was brought home to his country. Had any of the men whose fate was now before the House of Commons been guilty of such a great crime as Mr. Smith O'Brien? He had signed the roll of Parliament, had taken the oath of allegiance, was in the Queen's commission of the peace, and yet it was felt consistent with public safety to commute his punishment twice after he had been sentenced to death, and had been transported to mark the turpitude of his crime."

Mr. Gladstone said :

"The question which we have to determine is, what constitutes a political offence. It is quite clear that an act does not become a political offence because there was a political motive in the mind of the offender. The man who shot Mr. Percival, and the man who intended to shoot Sir Robert Peel did not become political offenders merely on this ground. By a political offence, I, at least, understand an offence committed under circumstances approaching to the character of civil war. Whenever there is a great popular movement, the offences committed in giving effect to the intentions of the people partake of the character of civil war. Reference has been made to the action of the

President of the French Republic in pardoning offences committed by communists; but it must not be forgotten that the offences—though darker than the crimes for which the Irish prisoners are under punishment—were committed in the progress of a civil war. But the riot committed at Manchester, by a crowd locally gathered together, was a proceeding totally of a different character, and must be considered as in the main belonging to the category of ordinary crime, though it is not on the ground that the offence is a political offence, that I think the prisoners in question can be recommended for consideration. But if these offences be not political offences in a strict sense, yet they were undertaken for a political motive, and in so far partake of that character as to effect, in a material degree, the moral guilt of the persons concerned."

That was the observation made by the most eminent of Englishmen as to the ingredients of a political offence, even in a case so obviously gross and, as many of us would regard it so totally alien from the ordinary category of political offences as the case of the Manchester murder.

Canadian Cases.

Well, Sir, let us come to our own country. History repeats itself in a wonderful way. I remember when we brought this case first on the *tapis* last Session amongst other things, we enquired of the Government what they had done with certain persons who were very active, apparently in stirring up discontent, in the latter half of the year 1884, Schmidt, Dumas and others; and after a while we found out that the Government had been giving them little offices, contracts, and one thing or another, and that they had been thus either marking their sense of their worthiness or attempting, to isolate them from the popular movement. And that is an old plan. I was looking a while ago into the earlier history of Lower Canada, and I found an account of what used to go on in the long agitation which culminated in the rebellion of 1837. As long before that time as I think, a quarter of a century, Governor Craig sent home Mr. Ryland as his secretary, to communicate with the Home Government with reference to the affairs of the

colony, which he was endeavoring to carry on with large assertions of prerogative and limited local rights; and Mr. Ryland gives an amusing account of an interview with Lord Liverpool, then Prime Minister, on the subject of agitators:

"Lord Liverpool then adverted to the particular character of the persons who edited the——"

Blank, I will say, for the moment——

"and asked whether they might not be brought over. I observed that, unfortunately, this system had hitherto been acted on in Canada, and that I considered the late proceedings of these individuals as the natural consequence of it, men of desperate fortunes with some talents, but destitute of principle, having been thereby encouraged to oppose Government for the purpose of forcing themselves into place."

Sir, the paper on which that was written was the *Quebec Canadian*. The *Canadian* still lives. Now the signatories of the response in 1837, by the committee of the county of Montreal to the Working-men's Association of London made this representation:

"Our grievances are not of new characters or of recent date. They have been publicly and distinctly stated, and the mode and measures of redress have been plainly defined. Our citizens have at public meetings reiterated them for years past. They have founded upon them humble petitions to your Parliament, which turning a deaf ear, now adds aggression to contempt."

That was signed among others, by Papineau, O'Callaghan, Nelson, Duchesnois and Cartier; and then comes also something which shows us how power generally acts under circumstances like these. We remember the events—so widely differing in many particulars—of the Lower Canadian revolt. But see how power treated it in the proclamation of Sir John Colborne on the 29th of Nov. 1837:

"Whereas, in divers counties of the district of Montreal, disaffection with the Government of Her Gracious Majesty Queen Victoria, has unequivocally declared itself and divers outrages upon the persons and properties of Her Majesty's loyal subjects have

been recently perpetrated therein; and whereas, prisoners arrested on charge of high treason have been rescued from the hands of justice, and the troops of Her Majesty, in the lawful discharge of their duty, which aiding the civil authorities have been assailed and fired on by the hands of an armed peasantry:

"And whereas, it is notorious that the present blind and fatal excitement in that district is to be attributed to the machinations of a few evil minded and designing men, who have imposed upon the credulity of an unsuspecting peasantry, and by plausible misrepresentations and wilful calumny, by practising upon their fears and inflaming their passions, by appealing to national distinctions and exciting political prejudices, which it has been the unabated endeavor of the British Government to extinguish, have at length succeeded in implicating a part of a peaceable and loyal population in the first excess of a reckless and hopeless revolt."

You would almost think I was repeating a speech we heard the other day. Then, we find how power acted again in the proclamation of Lord Gosford:

"Whereas, L. J. Papineau is charged with the crime of high treason, and there is reason to believe he has fled from justice; and whereas, it is expedient and necessary for the due administration of justice and for the security of Her Majesty's Government in this province, that so great an offence should not escape unpunished:

"I do hereby require and command all subjects to discover, take and apprehend the said L. J. Papineau and carry him before a justice; and for the encouragement of all persons to be diligent, a reward of £1,000."

A similar proclamation was issued against Wolfred Nelson, E. B. O'Callaghan, J. T. Drolet, M. P., W. H. Scott, M. P., A. Girod, T. S. Brown, C. H. O. Côté, M. P., J. J. Girouard, M. P., E. E. Rodier, M. P., and Jean O. Cherrier, offering £500 reward, and against others at the lesser price of £400. Then the ordinance of Lord Durham, who assumed to banish Wolfred Nelson, R. S. M. Bouchette, B. viger, S. Marchessault, H. A. Gauvin, T. Goddu, R. Desrivieres and L. H. Masson., to Bermuda, also provided:

"If any of them, or if L. J. Papineau, C. H. O. Côté, J. Gagnon, R. Nelson, E. B. O'Callaghan, E. E. Rodier, T. S. Brown, L. Duvernay, E. Cartier, G. E. Cartier, J. Ryan, sen., J. Ryan, Jun., L. Perrault, P. P. Dema-

ray, Jos. F. Davignon and Louis Gautier, against whom warrants for high treason have been issued, shall hereafter without permission come into the Province they shall be deemed guilty of high treason and suffer death.

"Nothing in any proclamation shall extend to the cases of certain named persons, or if any other person charged with the murder of Lieut. Weir, or with the murder of the late J. Chartrand, and they shall derive no advantage from such proclamations."

The case of these persons was raised in the English House, and Lord John Russell says :

"The Government has not neglected to let Sir J. Colborne know its opinion of the expediency of inflicting capital punishment on occasions of this nature."

Sir Robert Peel argued that an exception should be made in the case of the murderers of Lieut. Weir. As soon after as 1841, the following resolution was passed in the House of Assembly by a vote of 39 to 9 :

"Resolved, That it is the opinion of this committee, that an humble Address be presented to His Excellency the Governor-General, as representing the Crown in this Province, praying for the exercise of the royal prerogative for granting a free pardon, indemnity and oblivion, of all crimes, offences and misdemeanors, connected with the late unhappy troubles in the late Provinces of Upper and Lower Canada, to such of Her Majesty's misguided subjects, in so far as may be compatible with the safety of the Crown and the security of the Province, and of all attainders and outlawries during the period of four years."

In 1842, Mr. Lafontaine proposed to Sir Charles Bagot an amnesty, to which he agreed for all except Papineau. Mr. Lafontaine declined, and threatened to resign. The Government yielded, and a *nolle prosequi* was ordered as to Papineau whereon he was able to return, as he did in 1845. It is unnecessary, Sir, for me to refer to the Upper Canadian rebellion, in respect of which, one might almost go through a similar history. I have gone so far, in order to show the language which is used in events of this description, while they are going on, as contrasted with the language used a few years after-

wards, as illustrating the view taken when passions have subsided and the mists of prejudice have disappeared. It is to that view that the Executive should look in their determination of cases of this description ; it is not the view of the moment ; it is the view of the future they should look to.

Cases in the Fenian Invasion of Canada.

Then I turn to another case of a more recent date—the case of the Fenian invasions of Canada. These Fenian invasions harassed us for a number of years. On the 9th of March, 1866, Lord Monck reports to the Secretary of the Colonies :

"These reports, taken in connection with the open avowals at their public meetings, held in the United States, of the leaders of a portion of the Fenian Society, that it was their intention to attack this Province, had induced a feeling of great uneasiness and insecurity amongst the people. . . . It will be satisfactory to you to learn that the order calling out the force was issued by telegraph from headquarters and the different stations, late in the afternoon of Wednesday, the 7th instant, and that by noon on Thursday, the 8th, answers had been received showing that at that time about 8,000 men were mustered and prepared to move on any points where they might be required."

Well, the advance did not come at that time. On the 4th June, 1866, Lord Monck says :

"The body of Fenian conspirators who crossed the frontier from Buffalo to Fort Erie, on the morning of Friday, 1st June, proved to be between 800 and 900 men, and seemed to have been well armed. Immediately on the receipt of the intelligence of the invasion, Major General Napier pushed on by rail to Chippewa, a force consisting of artillery and regular troops, under Col. Peacocke, 16th Regiment. They came upon the Fenians encamped in a bush, and immediately attacked them, but were outnumbered and compelled to retire to Port Colborne. This occurred some time on Saturday, 2nd June. . . . We have 65 prisoners in our possession, who have been, by my direction, committed to the common gaol, at Toronto, to await trial."

On the 8th June, 1866, Lord Monck writes thus :

"Immediately after the first news of the invasion reached me the whole volunteer force of the province was placed on active duty.

"I am sure I do not exaggerate when I say that within twenty-four hours after the issue of the order 20,000 men were under arms and that within forty-eight hours after the same time they, in combination with the regular troops, were disposed, by the Lieutenant General commanding, in positions which rendered the Province secure from attack.

"With the assistance of the officers and men of the ships of war now in the St. Lawrence, a flotilla of steamers has been chartered by the Provincial Government, and fitted up as temporary gunboats for service, both on the river St. Lawrence and the lakes.

"Parliament is to assemble this day, and it is intended at once to suspend the *Habeas Corpus* Act and to extend to Lower Canada the Act at present in operation in Upper Canada (Consolidated Statutes Upper Canada, chap. 99), providing for the trial by military courts martial of the prisoners."

Then on the 29th May, 1869, Sir George Cartier and Hon. Wm. McDougall, presenting the claims of Canada with regard to the Fenian invasion, made the following report to His Excellency Sir John Young, Governor-General:

"The undersigned * * * deemed it their duty to represent on behalf of the Government of Canada to the Right Hon. the Secretary of State for the Colonies, Earl Granville, that the Dominion of Canada, and the Provinces comprised in it had expended several millions of dollars in resisting the attacks of the so-called Fenians. That such invasion did take place, and that several of Her Majesty's subjects lost their lives in repelling their murderous attacks, and a large amount of property was destroyed, and heavy losses and damages were sustained by several of Her Majesty's subjects."

"GEO. E. CARTIER,
"WM. McDOUGALL."

The report of the Privy Council, 2nd June, 1870, calls the Fenian invaders "Brigands." The despatch of Lord Granville expressly calls them "A body of conspirators" and declares that "It is not often in the history of civilised nations that a country has suffered from an attack so gratuitous and unjustifiable." The report of the Privy Council on 1st July, 1870,

speaks of the Fenians as "The miscreants concerned in these outrages." The report of the Privy Council, 28th July, 1871, states that:

"The Fenian organization has for nearly seven years been a source of irritation and expense to the people of Canada."

The memorandum of the Privy Council of 1871, declares that one of the principal objects of the organization created in November, 1863, has been the conquest of Canada against the people of which it is not pretended it has had any cause of complaint. The report of the Privy Council, of November, 1871, says of the expeditions:

"These plundering and murdering expeditions were promptly repulsed, but not without the loss of valuable lives and great injury to the country."

So much with reference to the view that high political authorities took of the character of those expeditions. Listen also to the language of Judge J. Wilson in passing sentence on R. B. Lynch found guilty without any recommendation to mercy:

"You and those who were with you profess to have come here to redress the grievances of many centuries and to right the wrongs of an oppressed people. You allege that the iron heel of the Saxon was placed on the neck of the Celt hundreds of years ago, and that your object was to free your land from that oppression. If you had reflected you would have seen that you began to do this by attempting to inflict on us the very injuries under which you contemplated your native land as suffering. Why should your iron heel be placed on our necks? In what way did we hurt you that you should endeavor to do this grievous harm, and why should our homes be made desolate, our young men slain, and our farms pillaged by you? Will any man of sense answer these plain questions? Was it anything less than murder, was there any possible excuse for you to come here in the dead of night to kill our people, to ravage our homes, and to lay waste our farms and habitations, in order, as you say, to relieve the conditions of Ireland? What right had you, or who could have authorized any man to commit such a wrong as you perpetrated upon us? It is putting the matter in a very plain and clear light, just such a light

as you must have perceived it in, if you had thought for a moment before going with this mad and wicked enterprise. You stand there surrounded by the friends and relations of the men you slew on that occasion.

You cannot be surprised that the law should be enforced, and that you should suffer its dread penalty, as I am very much afraid you will; for how could we permit the young unreflecting men who were brought here by you and others like you, who placed confidence in you, who put faith in what you said; how I say could we in justice punish them if we allowed you, the greater criminal, to escape."

And after that sentence and under those circumstances, that sentence was not executed. The prisoner's sentence was commuted, not even for life, but for twenty years' imprisonment and as far as my knowledge goes he was pardoned not very long after the sentence was given. That was the case of a person who never had any pretension of being a Canadian citizen, who never had any pretense of having a grievance against Canada, and who cost us so much in time, money, anxiety and life. *That indicates that the modern doctrine, as applied by ourselves in this case, is a doctrine which practically excludes from almost any conceivable case of a political offence a capital sentence.*

The Half-breed Rebellion.

Now I turn to this case in hand, and I say that some language has been used before and in the course of this debate, which I, for my part, cannot approve of, language which seems to ignore as non-existent the right of resistance. I think here, and I have never disguised my opinion, that the half-breeds should not have risen, and that in that sense the rebellion was not justifiable, but the position which was taken by the Minister of Militia at Winnipeg, and the position he took the other evening, and the position which other hon. gentlemen have taken in this debate, upon the general question, seems to me to be at variance with our understood constitutional rights in the larger sense. Always there is legal, but only generally is there moral guilt in a rising; always legally, generally morally, is there guilt,

but not always morally. I cannot approve of the spirit of those observations. **GOD-FORBID THAT WE CANADIANS SHOULD FORGET FOR A MOMENT THAT THE CORNER STONE OF OUR LIBERTY IS THE SACRED RIGHT OF RESISTANCE.** Some, through their blind zeal, do forget this. They forget that the sacred right of resistance was exemplified in the events which preceded the great charter, and is enshrined in that instrument itself; they forget that the pious and immortal memory of William is the memory of an intruder who rose to the throne through the people's resistance to their king; they forget that *the battle of the Boyne was the triumph of the insurgents over the monarchy*; they forget that *the glorious revolution was the consecration of the right to resist*, and that the present settlement of the British Crown is the visible embodiment of that right. Let me read you just two passages on that point to show that I am not extreme in these views. Amos says:

"But, as now, resisting tests were inconsistent with the revolution which was founded upon resistance, those of the acts of uniformity and militia were abolished at that epoch; and the non-resisting test in the Corporation Act was expunged from our statute book at the accession of the House of Brunswick.

"Thus there is no longer any obligation of conscience binding one soul in secular chains to regard the royal dignity merely as a descendible property, instead of viewing it as a trust for millions, subject to a right of resistance when rendered indispensably necessary by the *salus populi*."

And take Brougham's Political Philosophy:—

"The national resistance was not only in point of historical fact the cause of the revolutionary settlement; it was the main foundation of that settlement. The structure of the Government was made to rest upon the people's right of resistance as upon its corner stone, and it is of incalculable importance that this never should be lost sight of; but it is of equal importance that we should bear in mind how essential to the preservation of the constitution, thus established and secured, this principle of resistance is; how necessary both for the Governors and the governed it ever must be to regard this

recourse to that extremity as always possible—an extremity no doubt, and to be cautiously embraced as such, but still an extremity within the people's reach, a protection to which they can and will resort as often as their rulers make such a recourse necessary for self-defence."

I say I can not, as a Liberal, permit sentiments which appear to me to be sentiments of retrogression to the ages of absolute government, sentiments which from time to time in the best eras of English liberty, have been repudiated, to pass without saying what I feel of the sacred right of resistance; and I think it came with a very ill grace from the hon. the Minister of Militia to throw taunts at this side of the House upon that subject and to accuse us in effect of having stimulated by our views feelings of this description when he ought to have remembered that the Minister of the Interior under whose reign this rebellion broke out was the very gentleman who in 1849, signed the annexation manifesto declaring that it was the object and intent of the signatories to agitate, peacefully of course, for—and they set that up as their object—separation from England and annexation to the States. According to the high flown views of loyalty which hon. gentlemen opposite utter that would have been a treasonable act. I do not say it was a treasonable act. I shall not inquire into its motives and shall not ask how it was that the high-flying Tories suddenly turned round and advocated annexation. I believe there was a great deal to be said against the action of dismissing those who signed that statement from the militia; but for a gentleman who had for his colleague a Minister of the Interior who signed that declaration, and set that great example to the half-breeds, to give us the high-toned notions which he expressed, was, I thought, a little out of place. Now, having said this as to the abstract right of resistance, I think it is important that we should remember also that the more representative and popular is our form of Government, the rarer are the occasions upon which resistance is necessary or justifiable for the redress of grievances;

and, if, as stated in our Canadian charter, in that Colonial Secretary's despatch upon which our rights were chiefly dependent for so many years, if, the spirit of our charter is observed, and so long as the Government is administered according to the well understood wishes of the people, there will be no grievances to redress, and consequently there will be no cause for agitation, moderate or extreme, resistant or otherwise; and on the other hand, if the Government is not administered according to the views of the people, this Parliament is the field of battle, and we members of Parliament and representatives of the people are the army, and it is in this peaceful way that our contests are conducted and our grievances are redressed, and that government according to the well understood wishes of the people is eventually obtained.

When right of Resistance may be Excusably Exercised.

We must remember as well, that whatever the form of Government may be, whether you have a parliamentary form of government or not, there are two other conditions which are essential to the moral justification of the exercise of the right of resistance; first, that the grievances must be serious, must have been long endured, patiently represented, all peaceful means used and exhausted, so that there seems to be no hope of amendment by other means; and, secondly, that there may be some reasonable hope of success by this, the last resort, not indeed without loss to those engaged, but of important practical results. Now in the case before us, unfortunately, so far the unhappy persons who rose are concerned, our constitution was lame and imperfect. There was no representation in Parliament for them, and therefore we had not that safety-valve, that opportunity, that means of averting difficulties which a representative Government, applied to every part of the general body of the people, gives. My own opinion is that, if at an earlier date that representative government had been accorded, that the circumstance would have

prevented this rising. My opinion is, that if there had been a representative from the North-West, knowing what Mr. McDowell knew, what Mr. Lawrence Clarke knew, what the other persons who have made representations, some of which are before us, knew, a representative here in Parliament, speaking on the floor of this House the sense of his people, telling us what their difficulties were, calling for the papers, showing the grounds of their grievances and pointing out their neglect by the Government, each Session pointing out to the Government and to the House their remissness and declaring the growing condition of discontent and difficulty, the Government would have been stimulated to action, and that which ought to have been done would have been done, if not as early as it ought to have been done, yet early enough to avoid the frightful results which have given rise to this debate. The absence of that guide and safety-valve, of course at once increased the responsibility of an autocratic and paternal Government such as ours was in reference to the North-West; a paternal Government which refused this assistance; and it also operated, more or less, in as much as they had not provided for them the representative machinery to diminish the moral guilt of the people. But, with regard to the other aspects and conditions to which I have referred, I have already said that, while I condemn as in the highest degree censurable the conduct of the Government, I myself have not been able to agree that this rising was justified, that the conditions remove, although they may, and in my opinion do, lighten the stain of moral guilt; and therefore the case had to be dealt with on the question of punishment, and by the Executive under their responsibility to us. UNHAPPILY IT WAS IMPOSSIBLE IN THIS CASE FOR THE GOVERNMENT TO JUDGE THIS QUESTION FAIRLY. They had precluded themselves from that position. They had made this their own issue. They had declared that to admit the existence of grievances as a justification or a palliation for the insurgents, would be their own condem-

nation, and they, therefore, had declared that that death, which would be the indication that the extreme rigor of the law, was the appropriate punishment, that death on the scaffold was needful, in order to avert their own death here, and, thus they had become disqualified for sound judgment.

An hon. MEMBER. That is your opinion?

Mr. BLAKE. That is my opinion. In this connection I desire to say a word, and a word only, with reference to a charge highly calculated, if true, to increase the guilt, so far as he was morally responsible, of Riel. I refer to

The charge of venality.

I have already read that portion of the evidence of Nolin which shows the purpose to which this man stated he would apply the money which he was about to get from the Government—that he would apply it in starting a newspaper and in raising other nationalities in the States, and in effecting the prosecution of his designs. I say that however plainly that may appear to be a violent, a wicked, or a mad sentiment, it is utterly inconsistent with the charge of venality; it shows that this was the mode which, in his disordered mind, he thought would be most efficacious in order to accomplish the design for his people and for himself, as part of his people, which he entertained. But the very circumstance that he made that statement to Nolin to my mind proves that it is impossible that he could have made the proposal for a venal purpose. I know perfectly the prejudices which exist. I know how many men would like to ease their consciences by saying: Oh, this was a base, and venal man. But it would be an act of humiliating cowardice on the part of one who has formed another conclusion on this subject, to bend to such prejudices, and to allow a name which must ever be deeply clouded and stained, to receive another cloud or stain which he, at any rate, in my judgment, does not deserve. But I will add to this, that I had expected to hear ere now from an hon. gentleman who was

very intimately associated with Louis Riel, who worked together with Louis Riel in the North West, his appreciation of that portion of the case. I have been told a story—I was told it by one who knew—on this subject. When the first intelligence came, that he had asked the Government for money, that he was going to sell the cause: “Well,” I said, “this is a most extraordinary thing; it entirely alters the whole complexion of the case.” “Oh, do not believe it,” said the gentleman who knew. “Well,” I said, “I have every reason to believe that he asked for the money.” “Yes, that is quite possible, he is quite convinced he has a claim, but depend upon it, I know that it is impossible that he can have asked for money to deceive or to betray his people, or that he would betray their cause. I know all the events which occurred when he was in the Provincial Government. I do know that at the time when he was in power there in 1869-70, when he had the resources of the Hudson Bay Company at his command, his own family was in a state of destitution, living down at their place, and he would not allow any portion of what he called public property to be sent to them at all, even to keep them in life, and that same provisional council was obliged secretly to send down a bag of flour or something of that kind to his mother, who had the charge of the family, in order to keep them alive.”

An hon. MEMBER. Too thin.

Mr. BLAKE. Somebody says that is too thin. I refer the hon gentleman to the hon. member for Provencher (Mr. Royal) on that subject.

Incitement to Indians.

Now, Sir, with reference to the question of the Indian warfare. I think that if there was one thing above another that nerved us the very instant we heard of this rising, to press on the Administration in every way we could, to take all the steps which they with their greater knowledge of the conditions up there might themselves deem necessary, and not to make a single suggestion that they were doing too much, it was the possi-

bility of an Indian rising; the thought which immediately engaged us all was that there could not be a rising created by Riel and the half-breeds without imminent danger of an Indian rising, and that in the condition of the country we owed it to ourselves and to our humanity, to the isolated settlers all through that country to take very large steps, to make very great preparations that if possible, we might anticipate, at any rate minimise, the terrible results that might flow from that rising. No man felt, no man feels, more strongly than myself, the dangers, the difficulties, and the probabilities of an Indian warfare, and therefore I am quite prepared to agree that if you are dealing with a man of perfectly sound intellect, this would be very important as importing a very much deeper dye to the crime he was committing. But, Sir, I may say that I do not think that hon. gentlemen are entitled to rest the whole burden of this case upon that fact. In the first place we are to remember that the man himself was a half-breed, that he was partly of Indian blood, that those who were with him were half-breeds, that it was natural, in fact, in view of so large a part of their, through not of his, training, that that warfare should be adopted. In the second place, we can hardly hold our heads high with reference to this question of Indian warfare. Why, you remember the great fight between Wolfe and Montcalm at Quebec, and you remember the monument which celebrates that event, and in which their names are joined. But Montcalm had amongst his forces a thousand Indian warriors, and an Indian warfare was going on in connection with these events. In the other part of the Province at the very same time the English were using the Indians in warfare; the Americans had used them in warfare. Why Sir, it is but a few years ago that at the instance of my hon. friend from Brant, we voted \$5,000 towards a monument to Joseph Brant. I suppose we all know something of the history of Joseph Brant, and what a remarkable man he was. But to the end of his life

Joseph Brant defended, with all his enlightened Christian views, the Indian system of warfare as, for their circumstances and under their circumstances, proper and necessary, barring the question of torture, as to which, I am glad to say, he took an entirely different view, as many remarkable persons among the Indians have done, from the ordinary line. So with reference to Tecumseh, a name, perhaps, hardly inferior to that of Joseph Brant. So, that while we honor and refer to those persons, we cannot altogether forget this past in the present. Nor need we go so very far back. Why in the Lower Canadian rebellion there is a most interesting account of the feats of the Indians of Caughnawaga, who captured some 60 or 70 insurgents, but they were on the loyal side, and therefore it was a proper act. In the course of 1869-70, when Lieut.-Col. Dennis, as conservator of the peace, went into Manitoba and proposed to raise forces, he raised an Indian force. There 50 Indians under Chief Prince were enrolled as part of his forces, and they were doing garrison duty, which was all, fortunately, they were called upon to do at the time. The Government very properly disapproved of it, and they stopped it. They were thoroughly alive to the dangers and the improprieties of it. But it was not a crime of so deep a dye to engage the Indians and thus to create a great probability of an Indian warfare, as to prevent the late Lieut.-Col. Dennis from being raised immediately afterwards in the public service by those gentlemen, and being promoted in that service, and remaining in it until he was superannuated. Now, Sir, referring to another point, to the

Question of the Old Offence.

It is said by the hon. gentlemen opposite, and has been said very loudly, that my attitude on that subject entirely precludes me from condemning this execution. Well with reference to the old offence. We must remember that there was a general amnesty announced by the Government by proclamation, on their responsibility covering not that particular offence, but

covering all the political offences and disturbances. That amnesty was received with universal approbation. I do not remember a single voice or newspaper ever being raised against it. It was universally thought that the Government had done proper in issuing, and issuing early, that particular amnesty. It did not, however, cover this particular offence; but the rising, the political part of the whole affair, the raising of men in rebellion, the creation of a Government, the organization of forces, all that was with the unanimous consent of the people of Canada amnestied. There remained, as I have said, the question of this particular offence. As to that, what was my attitude in 1871? It is the same as my attitude to-day. I thought then, as I said then, that in my opinion the death of Scott was a cruel murder. There is just one point in respect of which the discussions which have gone on within the last few months have tended to modify my view, and that is the very point to which I have been drawing the attention of the House this evening. It is questionable, in my opinion, and those who read with the light which recent events and evidence have thrown upon these matters, will agree with it, will see in much that has occurred the reason of that question, *it is questionable how far the mind of Riel may even at that early day have been thoroughly balanced.* I do not intend to discuss it; I allude to it as the only thing in regard to which there is an observation to be made which differs my attitude to-day from my attitude of 1870 with respect to that event. That being my attitude then and my attitude ever since, an attitude in which I was confirmed by Sir George E. Cartier, who called it a cruel murder, by Sir John A. Macdonald, who also stigmatised it as such and invoked his Maker to testify to his anxiety to catch the criminal—that being my attitude, I was exposed at that time to a storm of indignation, because I expressed the view that those who had been, as I conceived, guilty of cruel murder should be brought to justice.

Mr. HESSON. It was because you

wanted to make political capital out of it ?

Mr. BLAKE. The hon. gentleman, who is always charitable, says it was because I thought to make political capital. The hon. gentleman has been some time in Parliament, and he ought to know it is not parliamentary to impute motives. I wonder what the hon. gentleman thought of it himself ? I wonder whether he thought it was a cruel murder, and whether he thought the murderer should be brought to justice or not ?

Mr. HESSON. I have not changed my mind.

Mr. BLAKE. The hon. gentleman thought it then and thinks it now.

Mr. HESSON. You have, I have not.

Mr. BLAKE. We shall see. I have just said I have not changed my mind. I did my best to enforce that view. I am told that I did it without papers and I want papers now. I had papers ; the Government had brought down the papers to the House ; they had brought down the full account of the murder. I have Mr. Donald Smith's account and the account of other dignitaries—all the evidence on which a man could reasonably come to a conclusion in advance of a trial. What did I want ? I wanted a trial ; I wanted that the man should be brought to trial, and I thought then and I think now that I had quite ample evidence to justify me in stigmatising that event as a murder, and in calling that the perpetrator should be brought to trial.

Full Amnesty was granted.

That being so, yet in the year 1875, I think I was amongst those who though, not of the Government, yet in our party councils, and subsequently in my place in parliament, most strongly supported by voice and vote the proposition that there should be an amnesty in respect of that offence. I believed that the facts which were revealed before the special committee on the North-West troubles proved that we were in duty bound to grant that amnesty, that we were in honor bound to grant that amnesty ; and so believing I acted upon that belief and sustained, as

I have said, by every force in my power the proposition that an amnesty should be granted. That amnesty was a very effectual and complete transaction. It was not granted simply upon the responsibility of the Crown without the approval of the people's representatives. The people's representatives were asked to take the initiative, at the instance, of course, of the responsible Ministers of the Crown, and they did so by an overwhelming majority, in which you are to count, not merely that very large majority, that voted for the granting of that amnesty, but also all those who voted for the granting of an unconditional amnesty and may have recorded their votes against this one because it was conditional. There was not absolute unanimity. The Minister of Customs was, I have no doubt, a Protestant, as Riel says, upon that subject, as some others were, and the First Minister declined to vote upon that occasion at all, so his opinions were left to be gathered from rather indefinite observations. But take it all round both as to political parties and as to the absolute majority, there was a very close approach to unanimity. The hon. member for Ottawa has made a discovery on the head of this and has found that because Riel was amnestied on the condition that he should absent himself from Canada for five years, and because for some sixteen months of those five years he was confined as a lunatic in a lunatic asylum by the authority of and at the instance of the Local Government of the Province of Quebec, Canada, he thus broke the condition and made himself liable, but for the leniency, kindness and consideration of this Government, to be executed forthwith upon his being found in the country and caught by the constables. Such is the view of the hon. member for Ottawa upon the criminal law. He has supported it by some extract from a book upon contracts, dealing with civil rights, and with the somewhat complicated question of the voidable character of agreements when made by a person of insane mind. But I will tell the hon. member, without endeavoring to enlighten him upon these subjects, that

my opinion is that the presence in this country of Riel in an insane state, should not be taken, as a breach of that condition in point of law, and that I little regard it, for I believe it would be considered even if it were a nominal, a technical breach, as nothing less in the literal sense of the term than a judicial murder if advantage had been taken of the presence of this lunatic to award execution against him. I therefore pass from this essay of the hon. member for Ottawa, into the regions of criminal law. I am a little surprised that it should be said that I am not free to exercise my judgment now, and to decide as to the extent of Riel's responsibility, because, in common, I believe, with a very large majority of my fellow-countrymen, I came to a particular conclusion which I still retain, with reference to the events of 1869 and 1870, which had been amnestied in 1875. How of my critics? Was the Minister of Customs free to come to such a conclusion? Was he hampered by the views he held on that topic in the earlier days? Was he hampered by his declination to vote even then for the amnesty? Was not he perfectly free to deal with this question in his executive capacity, entirely irrespective, as he was bound to do, of the view that he held that the death of Scott was in fact a cruel murder? How of the Secretary of State? As I have said, I was exposed to a storm of obloquy in certain portions of the Dominion because I had affirmed the proposition I have mentioned with reference to the death of Scott. Different views upon that subject were stated by many hon. gentlemen, and amongst them was the Secretary of State, who was of an entirely different opinion with reference to the question of the execution of Scott. My hon. friend from East Quebec, read the other day the resolutions which the hon. gentleman caused to be passed by the Legislative Assembly of Quebec upon that subject. I have here in addition an extract from a speech of the hon. gentleman, made in support of those resolutions on the 18th of December, 1874:

"J'arrive à un point brûlant, à un malheureux événement qui a dû mettre en feu tout le Canada, à la seule faute qui ait marqué la conduite du gouvernement provisoire de Manitoba.

"On a voulu rejeter sur quelques individus la responsabilité qui doit peser sur tous ceux qui avaient chargé Riel et ses compagnons de les protéger, de les conduire. Cet acte regrettable et que je condamne, a été commis par des personnes qui ont cru, de bonne foi, qu'il était nécessaire à la sûreté de la société et du gouvernement qu'ils jugeaient légal parce qu'il était issu du suffrage populaire. Tout ce que l'on peut dire sur l'exécution de Scott, a été répété souvent. C'est un sujet qu'il importe de laisser dans l'oubli afin de ne pas réveiller les susceptibilités nationales. Je demande qu'on l'oublie, comme je désire que l'on ne parle plus du meurtre de Goulet et des autres métis. Le sang appelle le sang, et il y en a eu assez de répandu pour satisfaire les deux partis, en admettant, ce que je ne veux pas admettre, que les deux nationalités en conflit sur ce point exigent cette barbare réparation."

Of course this statement made by the hon. gentleman who in the remaining part of his speech pointed out that he knew something of this matter, who himself had been the counsel for Lepine upon his trial for that murder, naturally produced a great impression amongst his compatriots, and would have the effect of causing me to be regarded amongst them as very cruel, hard-hearted and unjust man, who had proceeded so to deal with transactions which the hon. gentleman *avec connaissance de cause*, has so described. I am relieved from those imputations so far as those imputations may be due to any weight which his compatriots at that time placed in the words and statements of the Secretary of State, by his recent utterances. I am going at this moment to try another mode of arriving at the hon. gentleman's recent statement. I am afraid from the type that it is from the same unhappy paper, but it is a letter I am about to quote, and perhaps by some fortunate accident it may have been correctly copied. The letter of the hon. gentleman to his constituents contains these words:

"Riel was informed of it—"

That is of the arrival or approaching arrival of Monsigneur Tache.

"Riel was informed of it, and feeling that his reign was about to close, did not hesitate to throw a corpse between himself and the conciliation which was arriving with the holy missionary. Scott was immolated and his blood thrown as defiance at all efforts of reconciliation * * Last winter was not Riel's debut in this course of high treason. His revolt in 1869 will be remembered—the useless murder of Scott, whom he caused to be executed when that poor unfortunate was in a position where it was impossible for him to injure his captor."

I am going to try another plan of being correct this time, and I shall take the *Montreal Gazette's* report of the Secretary's speech at Terrebonne, in which he said, with reference to his action in 1874, in the case of Lepine :

"I defended my client, and during that defence I had proof, and the best proof too, that the killing of the unfortunate Scott was one of the most atrocious murders ever committed. That atrocious murder was without the connivance and without the approval of Lepine, but it was the result of the selfish vengeance of the then dictator of the North-West—Louis Riel.

Now, Sir, perhaps the hon. member for North Perth (Mr. Hesson), with that accurate appreciation of motives and that Christian charity which animates him in the exercise of that appreciation, will discern on what principle it was that the Secretary of State in 1875 described, as I have read to you the event to which I have referred, with the knowledge that he had of that event, as proved by the description of it which we got from the Secretary in the year 1886; and he will tell us how he came to treat it in one way in 1875, and in another way altogether in 1886. I do not occupy that position. I regard it now as I regarded it in 1871 and in 1875. I am fortunate enough not to have required a reversal of my opinion in the interval, though the Secretary of State seems to have required fifteen years to ascertain the facts and arrive at his last conclusion. Now, Sir, whatever was the guilt of 1870, whether the hon. Secretary of State of 1875, or the hon. Secretary of State of 1886, be right upon that subject, here was, as I have said, a solemn amnesty—an act of oblivion.

What is the meaning of "Amnesty"?

It is a blotting out of remembrance. What is the meaning of "oblivion"? It is the same. That is the technical meaning expressing the reality of these transactions; and it is in my opinion, contrary to the spirit of our law that we should, at this time and under these circumstances, bring up the event which was so solemnly amnestied, as a reason why the extreme penalty of the law should be inflicted if but for that event it should not be inflicted. Will you allow me to read a word or two that Sir Robert Peel used in the House of Commons when, at as early a period as 1825, he proposed a Bill for restoring the credit of criminals:—

* * * "By the spirit of the English Constitution, every man who had satisfied the justice of the country, by a pardon ought to be restored to the same situation as he was in before he committed any offence. * * * The Bill would also go to place persons whose sentence had been commuted in the full enjoyment of all their rights as free citizens. So when a capital convict has fulfilled his commuted sentence of seven years' transportation, he was to be restored to all his 'credits' and capacities.' * * * In God's name, when parties had expiated their offence by fulfilling the sentence of the law, why should any exclusion remain against them? It was therefore provided by the Bill, that whatever a party had undergone the punishment awarded by the court for any offence, he was then restored to all his rights, credits and capacities, in as full a manner as if no offence had been committed."

Much more solemnly can we apply such language to the case of a parliamentary amnesty such as was granted here. Now was he hanged for the old offence? If yes—if his sentence would have been commuted but for that, then he was in effect hanged for it; and this would be in effect to adopt the views of those who called for his blood, on the ground of the death of Scott. But, Sir, if his intellect were disordered, how could the old offence be taken into consideration in administering the extreme punishment for the new. Incarceration for life was required; pardon would not have been right;

That is one of the observations hon. gentlemen opposite make: "You say he ought to have been pardoned." I have not said so. *I say pardon would not have been right. The safety of the State and his punishment, taking the strongest view against him of his mental condition, demanded incarceration; but the amnes-tied offence should not have hanged him.*

Was Riel Executed as a Deterrent.

It is said the execution was needed as a deterrent. Sir Alexander Campbell, in his report, has declared that there never was a rebellion of which it might be so truthfully said, that it was entirely the act of one man—that if he had not come there, or had been removed one day before it took place, the outbreak would not have taken place. Yet, he said that as a deterrent to others against rebelling, it was necessary that he should be executed. I do not think so, I have not so ill an opinion of the people of the North-West. Incarceration would have been quite enough to deter, with all the other results which have followed from their unjustifiable rising. Justice and mercy, redress of grievances, and a proper attention to the rights and interests of the people, are the best deterrents. We asked, to-day, Sir, in our prayers, that peace and happiness, truth and justice, religion and piety, might be established amongst us through all generations, but I do not believe that it is by this man's blood that a step has been taken to accomplish that result. *I do not see how, on the score of necessity to deter, you can justify hanging a man of a disordered intellect.* That is a deterrent, it is true, but it is a deterrent to the continued existence of the principle of capital punishment. Now, Sir, one word with reference to the

Reprieves and the Delays.

We have not yet heard a satisfactory explanation of the last reprieve. I do not desire to detain you on that subject; but I wish to advert to an authority

upon it. In 1869 the Home Secretary, Mr. Bruce, said this:

"In Windsor's case, again, although the enormity of the offence was undoubted, still the sentence having been postponed for six months, in order that important questions of law might be determined, the right hon. gentleman had thought that it would not be right, after that lapse of time, to permit the prisoner to be executed."

I will advert to one other case of which I happened to become personally cognisant when Minister of Justice. In the discharge of my duties I visited the Kingston penitentiary and conversed with the Warden in reference to a number of prisoners. Amongst them was one whose sentence had been commuted a great many years ago. I enquired into his case. He was a navy, I think, living a little way out of Hamilton, on the Toronto and Hamilton Railway, perhaps during the time of its construction. He had been convicted of a cruel and brutal murder of his wife with a crowbar. She was found in a terribly mutilated state; he was tried, convicted and sentenced. At the last moment the technical legal point was raised that the law required an associate on the bench when the sentence was pronounced, or at some stage of the trial. The associate had as little to do with the case as the magistrate in this case. Yet it was proved that the associate was off the bench. Upon that the man was reprieved until the question should be decided by the judges. The judges decided that the objection was fatal and the trial a mistrial, and that the man must be tried again. He was tried at the next assizes, and of course convicted again, and upon the score of the time that had passed, though there was not the slightest ground otherwise, his sentence was commuted. Now, the hon. Minister of Militia referred to what he called the evidence with regard to the

Letter of General Middleton to Riel;

Yet he did not satisfy me that Riel did not surrender on that letter. The statement of Colonel Boulton read by the

Minister was directly to the contrary, and if we remember the whole circumstances of the case — the time General Middleton wrote the letter, and the condition of things stated by the First Minister on one of the discussions last session as to papers, I do not think that is a fair inference from the evidence. But the hon. Minister said he would prove the purpose for which that letter was given, and he proved it by reading a letter from the Lieutenant General, who, he said had been told by some one that Riel was afraid of being killed in the camp. That was not very good evidence against Riel as the hon. gentleman knows. The intent with which General Middleton sent the letter is of no consequence.

The question is what does the letter fairly import? The authority of General Middleton is not of any consequence, if that were disputed, though I do not suppose it is. Now, the question, to my mind, on this subject is just this; Is it for the honor and credit of the volunteers of Canada that it should be declared that that paper was sent in order to warrant the prisoner, if he surrendered himself, against lynch law? Is it to the credit and honor of the volunteers to say that it was necessary for a Major General in the British army to give assurance to Riel and his council that they would not be lynched if they surrendered themselves? I should be sorry to come to any such conclusion; and then, the question remains: Was it not reasonable to believe that the result of this statement was, you shall not, in fact, be exposed to the very worst that you can possibly be exposed to if you are caught, that is death. I think the liberal interpretation of that letter, in the sense and spirit in which such letters and assurances have been interpreted in all events of this description, would have led to that conclusion. I turn to the subsequent question, the promise of inquiry and the expectations of commutation. I turn to the very important statement by the hon. member for Hochelaga (Mr. Desjardins) on that subject, and to the language of the Ministerial press, and I

say that those expectations ought not to have been aroused, that that attitude ought not to have been taken unless they were to be acted upon and abided by, truly, faithfully and loyally, because if they had not been aroused, other steps might have been taken, other evidence might have been brought forward, other facts might have been presented to the Executive, which naturally would not be brought forward if there was an understanding that there was to be an efficient inquiry. For my part, I always believed there would be in this case, a commutation, having regard to the circumstances and the testimony as to the prisoner's mind; and I believed that if there was doubt in the mind of the Government on the question of

The Mental Condition of the Prisoner.

that doubt would have been attempted to be solved by an efficient and proper medical enquiry; particularly so when we find that Dr. Howard was not called. Now Dr. Howard said in Montreal he could do Riel no good, because, under the law, although he obviously implied he did not agree with the law, he would have been obliged to prove that Riel was responsible. Of course he would. *He thought Riel was irresponsible and that the law was wrong.* He could not have disturbed the verdict, but his evidence would have been important as to the state of Riel's mind with a view to the awarding of punishment afterwards. So with *Archbishop Tache* who, we see, in his letter declared that he *had formed the conviction that for twenty years, with all his brilliant gifts, this unfortunate man was the victim of megalomania and theomania.* So with reference to *Bishop Grandin*, whose letter the Minister of Militia read, dated June, in which the bishop characterises Riel as a *miserable maniac.* So with reference to a number of pieces of evidence I have collected and gathered from newspapers which were accessible to Ministers, but which I will not trouble the House with

at this hour. So with reference to the *diary which contains indubitable traces of a disordered mind*. So with reference to the last effusion I have read, the prophesy of Regina, which *no man can read without coming to the conclusion that he who wrote it was disordered in his mind*. So with reference to the papers not brought down. I have been told that of the Orders in Council of the provisional government, which are in the custody of this Government, the very first is an order declaring Riel a prophet, something after the fashion of John the Baptist. I have shown you he called himself Elias and Peter, and this order, I believe, represents him as John the Baptist. The next order was one altering the days of the week and so forth. All these things and many statements that were made, some of them at an earlier period, as to circumstances which had occurred, were worthy of attention. So were the letters written with reference to the trial. At the close of the trial, the correspondent of the *Mail* reported that Dr. Clarke, after having heard the evidence which was called since Riel's examination, and after having heard the prisoner himself speak, was quite convinced he was insane. I say the case was one in which IT WAS INCUMBENT ON THE ADMINISTRATION, IF THEY FELT A DOUBT AS TO THE PROPRIETY OF COMMUTATION, TO HAVE A THOROUGH MEDICAL EXAMINATION AND ENQUIRY. The medical examination they caused was limited in scope. Sir John A. Macdonald's letter expressly points that out. We have not the instructions to these gentlemen, but Sir John's letter to the Minister of Militia pointed out that it was limited to the question whether Riel's condition had become so much worse since his trial that he was no longer capable of knowing right from wrong. It was not therefore such an enquiry as has been frequently made in cases infinitely weaker than this ; it was not an inquiry which involved the real question : What was the condition of his mind at the time of the offence, which constituted the crime he committed ? What was the condition of his mind before that time ? So with reference to

the very important point of hereditary insanity. I have read in the *Mail* the statement that his mother went into a state of absolute craziness during the rebellion, and a statement of her falling into the same condition at a subsequent period, when she heard of the conviction—a circumstance, the importance of which, in considering what the real condition of this man's mind was, cannot be overstated, as must be extremely familiar to all those who have made mental alienation a study. These gentlemen were not specialists. Dr. Valade certainly was not ; Dr. Lavell had very limited experience, having had, for a short number of years only, the charge of the criminal lunatics in the Kingston penitentiary, because up to a comparatively recent period the criminal lunatics were transferred to Rockwood which was under other orders. Dr. Lavell also, if I be rightly informed as to his views upon a late occasion, that of Lee's examination, was a very improper person to send to find Riel sane or insane, because upon that occasion, if I am rightly informed, his opinion was that the man was sane, though the others found him insane. The experts also who had been examined, at the trial took no part in the subsequent examination, except perhaps Dr. Jukes, who did not take any real part in it. Then we have not the reports of the commission, we have only this edition of their reports which has been laid on the Table, and we do not know what their instructions were or what were the reports on which the government acted. I say however that for the purpose of a proper discharge of the duties of the Executive in cases of disordered intellect though not amounting to irresponsibility, those reports, even such as they are brought down, were of the highest importance. They prove the genuine existence of delusions and hallucinations on the subjects of religion and politics, on the very subjects on which the delusions and hallucinations were proved, in respect of which the crime was committed. They show that these were persistent, and *my conclusion is clear that Riel was to dis-*

ordered in mind as not, within the accepted rule, to have been a proper subject for the capital sentence. It is impossible, in case of serious delusion or so called monomania, to be sure how far the flaw has affected the conduct in question. It may not have affected it in some cases, though whether it did or not is very frequently a question beyond the wit of man to determine. But here we know it did, because we know that the flaw had regard to these very two points of religion and politics upon which this rising and these events turned. Criminal responsibility, then, for public security there may and must be, though there may be some mental disorder; but not responsibility unto death; and here again come in the political nature of the offence, the general rules relating to these offences and the special circumstances of the conduct of the Government in this matter; and my belief, therefore, is that the maximum sentence for the same crime of which Riel was convicted, had he been tried under the milder procedure of the modern law under which his colleagues were tried, namely, imprisonment for life would have been the proper and adequate disposition of his case. But if the Government doubted this there was an imperative call for thorough and efficient inquiry, for an inquiry going far beyond what was possible at Regina, and extending to the condition of the criminal not only at that moment, but at other times, there was imperative ground for such an inquiry before a determination should be reached, that the sentence should be executed. My own opinion is, then, that a GREAT WRONG HAS BEEN DONE, AND A GREAT BLOW HAS BEEN INFLICTED UPON THE ADMINISTRATION OF CRIMINAL JUSTICE; AND FOR THIS THE EXECUTIVE IS RESPONSIBLE TO US. I know the atmosphere of prejudice and passion which surrounds this case; I know how difficult it will be for years to come to penetrate that dense atmosphere; I know how many people of my own race and of my own creed entertain sentiments and feelings hostile to the conclusion to which I have been driven; I know that many whom I esteem and

in whose judgment I have confidence, after examination of this case, have been unable to reach my own conclusion. I blame no one. Each has the right and duty to examine and judge for himself. But cries have been raised on both sides which are potent, most potent in preventing the public from coming to a just conclusion; yet we must not, by any such cries, be deterred from doing our duty. I have been threatened more than once by hon. gentlemen opposite during this debate with political annihilation in consequence of the attitude of the Liberal party which they projected on this question; and I so far agree with them as to admit that the vote I am about to give is an inexpedient vote, and that, if politics were a game, I should be making a false move. I should be glad to be able to reach a conclusion different from that which is said by hon. gentleman opposite to be likely to weaken my influence and imperil my position. But it can be said of none of us, least of all of the humble individual who now addresses you, that his continued possession of a share of public confidence, of the lead of a party, or of a seat in Parliament, is essential or even highly important to the public interest; while for all of us what is needful is not that we should retain, but that we should deserve the public confidence; not that we should keep, but that while we do keep we should honestly use, our seats in Parliament. To act otherwise would be to grasp at the shadow and to lose the substance; *propter vitam vivendi perdere causas*. We may be wrong—we must be true—we should be ready to close, but resolved to keep unstained our public careers. I am unable honestly to differ from the view that it is deeply to be regretted that this execution should have been allowed to take place, and therefore in favor of that view I must record my vote.

THE QUEEN

VS.

F. V. C. SHORTIS

ENGLISH ADDRESSES OF COUNSEL
AND THE
CHARGE OF THE HON. MR. JUSTICE MATHIEU
TO THE JURY

AS TAKEN BY
JOHN J. LOMAX AND A. A. URQUHART,
OFFICIAL STENOGRAPHERS TO THE COURT.

MONTREAL:
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INTRODUCTION.

The prisoner, Francis Valentine Cuthbert Shortis, was indicted for the murder of John Loye and Maxime Lebœuf, in Valleyfield, on the 1st of March, 1895. The trial of the case commenced on the 1st day of October, 1895, and was concluded on the 4th of November, 1895.

Owing to the importance of the trial, the public interest manifested in it, the defence of insanity and other important questions of law that arose during the proceedings, it has been deemed important to preserve in authentic form the addresses of Counsel, and charge of the Judge. The addresses and the charge here given are taken from the notes of the official stenographers.

The present publication is not intended to interfere with any later or more extended publication of the proceedings of the trial, which were taken from day to day by the official reporters, and which are preserved among the records of the Court. When this work is undertaken by more competent hands, no doubt a full statement of the evidence, and of the various points that arose for discussion will be given, including the speeches of the two distinguished French Counsel who took part in the cause, namely, Henri C. St. Pierre, Esq, Q.C., of Counsel for the defence, and J. G. Laurendeau, Esq., of Counsel for the Crown.



Canada :
PROVINCE OF QUEBEC,
DISTRICT OF BEAUHARNOIS.

COURT OF QUEEN'S BENCH

[CROWN SIDE.]

THE QUEEN

VS.

F. V. C. SHORTIS.

INDICTMENT.

The Jurors for Our Lady the Queen present that : Francis Valentine Cuthbert Shortis murdered John Loye on the first day of March, (1895) one thousand eight hundred and ninety-five ;

And the said Jurors do further present that : Francis Valentine Cuthbert Shortis murdered Maxime Lebœuf on the first day of March, (1895) one thousand eight hundred and ninety-five.

The prisoner was tried upon the first count.

As stated in the preface, the trial commenced on the 1st day of October, 1895, before a jury composed half of jurors speaking the English language, and half of jurors speaking the French language. The addresses of Counsel were concluded on the 2nd of November, and the Honourable the presiding Judge charged the jury on the same day. The verdict was not taken until the following day (Sunday), the 3rd of November, at 9 a.m., when the jury returned a verdict of "guilty."

On the 4th of November, at 10 a.m., the Honourable Judge pronounced the sentence of death upon the prisoner.

A report of the final proceedings may be found at the end of this pamphlet.

Counsel for the Crown :

DONALD MACMASTER, Q.C.

J. G. LAURENDEAU.

Counsel for the Defence :

J. N. GREENSHIELDS, Q.C.

H. C. ST. PIERRE, Q.C.

GEORGE G. FOSTER.

ADDRESS OF J. N. GREENSHIELDS, ESQ., Q.C., OF COUNSEL
FOR THE DEFENCE, TO THE JURY.

May it please the Court, Gentlemen of the Jury :—

“Thou shalt not kill” was a commandment given by our Almighty Father to his chosen people, a people who trace their origin back to creation, and whose traditions show that murder was the first of human crimes. The precept, “Whoso sheddeth man’s blood, by man shall his blood be shed,” has been embodied in the penal code of every civilized nation, down to the present day. It is for an alleged violation of this commandment, on the part of the prisoner, that you have been detained in this Court for four long weeks in this tedious and wearisome trial.

This is a direct order from Heaven to the Learned Jndge, to you, to me, as well as to the prisoner at the bar. You have taken your oath before your country and your God, as jurymen to do justice between your Queen and the prisoner at the bar. If by any prejudice, if by any passion, if by any preconceived ideas, you should render an unjust verdict against the facts ; if the Court should, by a wilful misinterpretation of the law, if the Counsel engaged in this trial, if anyone of us should, by any wrongful act, contribute to bring about an unjust verdict, which would deprive the prisoner of his life, we too should have violated that command, “Thou shalt not kill.” Murder is a terrible crime. It is a crime against God and man. It is a crime revolting in its nature and deprecated by all right thinking persons, and it is well that it should be so. When the people of this country read on that fatal morning of the 2nd March that Maxime Lebœuf and John Loye had been killed in cold blood in the office of the Montreal Cotton Company, at Valleyfield, a thrill of horror passed through the entire community, and all declared that the perpetrator of this crime, of this terrible tragedy, deserved no mercy, no consideration, and no protection from

his fellow-men, and that to him should be meted out the full punishment of the law. When I read the history of this homicide on the Sunday morning, when I read the details of the murder, I said, "The man who perpetrated it must either have been insane or one of the most debased and deepest dyed criminals that ever had been brought before a Court of Justice."

At the time we were empanelling this jury, when you gentlemen were brought into that box, and sworn as to whether or not you stood impartial in this trial, I was not surprised that every man said that he had formed an opinion as to the guilt of the prisoner. If the prisoner in the box is sane, if he possesses all the faculties of a sane man, then no man could be guiltier, and he could not possibly presume to stand before you and demand your consideration.

For Valentine Shortis as a murderer, I have no mandate to speak. If I thought that his Maker had sent him into this world with his full mental faculties, I would not stand here one instant between him and the avenger. If I did not believe that this man came into this world an imbecile, if I thought that he was a responsible being, I would not utter one word in his defence, and my voice would never have resounded through these halls. I can well appreciate the feeling that went forth when these men were killed. I have heard it said here, and heard it said on all sides, before the evidence was put before you, gentlemen of the jury, that no man should or could raise his voice on behalf of the prisoner. Now, I desire, at the outset, to say this to you, that the position of the lawyer in an important trial of this kind, the position of him who appears for the defence is as equally important, equally in the interest of justice, equally in the interest and maintenance of law and order, as that of the Counsel who represents the prosecution, and the law in its wisdom recognizes, that in the administration of justice every subject of Her Majesty is entitled, and should be represented before the tribunal which seeks to deprive him of his life or liberty.

You know, that following upon the scene of this tragedy, there nearly occurred what would have been a disgrace to this community, and that was the lynching, or the illegal killing of the prisoner at the bar. It is well that our people in that moment of excitement, in that moment, when perhaps, their passions, (which I am not here to condemn) might have carried them to undue lengths, were able to exercise proper restraint and prevent what would have been a disgrace to our country. Thank God! in this Canada of ours, our people have confidence in the administration of law, that whatever the crime may be, however great it may be, they feel that the strong arm of the law can protect. It is well that this trial took place, it is well that the trial of the perpetrator of this tragedy, terrible as it appeared at first, is left to the cool and calm judgment of twelve men like those whom I see in this jury box. I asked you when you came into that jury box, I asked you, each and everyone of you (whilst as honest men saying that you believed the prisoner was guilty, guilty of the murder, guilty of the killing, guilty of the homicide), that if in the trial evidence was unfolded before you which disclosed an irresponsible condition of the prisoner's mind, you could give him that fair and impartial trial which he was entitled to in a British country, and you each and all said "yes." We have not here what we too often see across the line in the far distant west, men taken and executed without trial, without reason sometimes, by an enraged public, who have allowed themselves to be carried away by their passions. We, of the defence, feel that we are demanding from you, and that we will obtain from you, what is but the right due to every free born British subject, and that is, a fair and impartial trial. We feel that you will consider the evidence as honest men, that you will give it all the due consideration it is entitled to, and if, after having considered the evidence adduced before you, you, as honest men, come to the conclusion that Valentine Shortis was insane on the night he committed this deed, that notwithstanding whatever may be said, that you will have the courage and manhood, as honest men, as men

entrusted with the administration of justice, to state so, but if, on the other hand, you do not think so, then you will find him guilty, with all its terrible consequences. All we ask from you is fair play, all we ask from you is justice, and if we receive that, at your hands, then we have no fear as to the consequences.

Now, gentlemen of the jury, you are charged here with a most serious and responsible duty. There is no position which a man can occupy in this world so responsible, so great as that which, by the law, places the life of a fellow being in his hands. You have the right to send Valentine Shortis to meet his Maker and his God. The law has clothed you with this supreme power—a righteous law, a law which protects all men in our community, a law which had its import and beginning in the rights of man, and in Magna Charta which said that a man accused of a crime against his fellow-men was entitled to be tried by a jury of his peers. You, together with the Court, from whom you will take the law, and who with his well recognized ability and learning will tell you what the law is with that wisdom and long experience which he has had, and to that law you will apply the facts. You are the sole judges of the facts. It is for you, and you alone, to say whether Valentine Shortis on the night of the first of March, when this terrible tragedy occurred, was responsible or not, whether he entered that mill with malice aforethought, whether he went there with the intention to kill, whether he went there with the intention to rob, or whether he knew what he was doing on that fateful night. You are the sole judges of the facts. You alone are responsible for the verdict. You alone have to answer to your conscience and your God for the verdict you give. It is a serious responsibility which, thank God, I do not bear to the same degree. Mine is to do my duty, mine is to give to you what little benefit my experience and knowledge of the facts may be, but beyond that my responsibility ceases; nor has any one of us for the defence the power to say whether or not the prisoner at the bar is guilty. You alone have that responsibility. In the

years to come, when the intense excitement pervading this community and this Court shall have passed away, when the recital of this tragedy shall be spoken of as a story that is often told, when children gathered around the fireside shall speak of this, the greatest trial that has ever taken place in this district, when your names shall be mentioned because of the serious importance of your part in this great trial, when you shall be asked to tell a rising generation of your verdict, I trust that you will be able to put your hand upon your heart and say: "I did right, I acted honestly, and I did no wrong in the verdict which I rendered in the case of the Queen against Valentine Shortis." All that we ask from you is this and nothing more. You have listened patiently and attentively to this trial. We did not think it would take so long to unfold the facts before you. We have tried, so far as lay in our power, to curtail this trial, and to keep you as short a time as possible from your homes and families. You have paid close attention to the evidence, you have listened with a patience to the unfolding of the whole story that is rarely seen in trials by jury, and I feel for this reason that my task and my duty is somewhat lighter than it otherwise would have been. Now, gentlemen of the jury, give that same attention to the end, and give it when you retire to your jury room to prepare your verdict after this case shall have been closed.

We do not deny the killing. We do not come before this Court and say that the prisoner in the box did not kill Maxime Lebœuf and John Loyer. We say that at the time when this homicide took place Valentine Shortis was insane, and knew not what he did. Now, that is a defence which the law recognizes, that is a defence which, if proven, is as honest and as right as a plea of not guilty, or proving that the man was not the author of the act. Of course, I understand that many say, "Oh, insanity is often the shield of the scoundrel and of the criminal." It is for you, gentlemen of the jury, with your knowledge of human nature, with your knowledge of the passions of human nature, and of what

moves and prompts men to action—it is for you, with your responsibility as jurors in this case, to decide this question. Now, what we say to you, and what the prisoner through his Counsel says, because he could not plead it himself, what we say is, that on that fateful night, that terrible night of the first of March, after the first shot was fired, this man, by a lapse of self-consciousness, was absolutely irresponsible and knew not what he did, was insane, and was suffering at that time from natural imbecility and disease of the mind, by which he could not distinguish the nature and quality of the act, and know right from wrong.

Insanity ! Insane ! If there is one class of our fellow-men who deserve our consideration, it is the insane. He comes into this world afflicted of God, with a mind imperfectly formed, or having come into this world with a mind properly formed, that mind becomes diseased by some cause or other best known to our Father and our Creator. In the olden days, centuries ago, and even farther back in the history of humanity, the madman was treated more as a criminal than one afflicted of God. The mad-house of the past lives on the pages of history as a disgrace to our forefathers. The insane one hundred years ago were punished because God had visited upon them this awful affliction, which deprived them of their reason. Their reason dethroned, irresponsible, without knowledge, they were treated as if they were possessed of the devil. They were held responsible for it. Thank God ! with the growth of Christianity, with the progress of humanity, with the enlightenment of the age, the insane, the imbecile, the idiot of to-day is the subject of our care and protection rather than our punishment. This is the position in which I wish to put the matter before you now. If you find that Valentine Shortis was insane on the night of this terrible tragedy, then you cannot say that he committed a crime against his God, and if he could not commit a crime against his God by reason of that God having afflicted him with a derangement of the mind, much less could he commit a crime against his fellow-man, and instead of his being the

subject of your punishment, he should rather be the subject of your commiseration. For the victims of his insanity, none have more sympathy than I have : For those children and that widow, made orphans and a widow by the act of the prisoner at the bar, the sympathy of every right thinking man in this district, and the sympathy of the father and mother of the prisoner at the bar, goes out as freely and to as great an extent as the sympathy of any one who stands within the sound of my voice in this Court House, but, gentlemen of the jury, if that act was committed by the prisoner at the bar in an irresponsible moment, then let us not extend the terrible consequences of that act, by not only making the widow and the orphan, but perhaps hastening to an early grave the father and mother of this unfortunate boy.

Now, so much for the plea of insanity; so much do I beg of you, and I ask you, as men, as honest men, to set aside all animus against the prisoner, to set aside all prejudice, to set aside any possible opinion that you may have formed, and to approach this subject with a mind free, and to decide and judge the question of his sanity or insanity upon the facts which have been disclosed to you here in the witness box, and upon no others. If the evidence shows you, that on the night of the first of March that man was insane, was an irresponsible being, then I ask you for a verdict in accordance with it.

This case, I think, stands unique as a case of insanity. From his childhood days up to the moment when the first shot was fired in the mill, his history repels any other conclusion than one of insanity.

His family history, his life, his ancestry and heredity, all clearly indicate insanity.

Now, with your consideration, I propose to discuss and to review in a brief manner the evidence on which we, of the defence, rely for a verdict of insanity.

I will take the evidence from the time of the boy's birth, and bring it down with you until the night of the first of March. This boy started out in life with the chances of

insanity in his favor, with a grandfather who died a raving maniac, with an uncle (a brother of his father) who had been for a period of ten years in a lunatic asylum, an epileptic maniac, and who died in the asylum in Clonmel. That stands out boldly before you on his father's side of the house. On the other side, his grandmother, that is, his grandmother on the paternal side, we have there two of his ancestors being confined in lunatic asylums, and having lost their reason. You have, in addition to that, the fact that four of his father's sisters died of consumption, which, with the pedigree and lineage, such as I have outlined to you, is closely related and allied to insanity. What a terrible, what an awful history this boy started out his career in life with. The learned alienists have told you that there are two periods in life where hereditary insanity, if there is a taint in the blood, will show itself. The first is at the adolescent age of life. The second, (if, by any chance, they pass through that), the taint will show itself, in the case of women between forty and fifty years of age, and in men between fifty and sixty years of age. This boy, therefore, from the day that he was born and breathed the free air of heaven, has had overhanging his whole life a dark and dismal cloud, which at any moment might overwhelm him to make him as his ancestors were before him. Now, you have heard the doctors examined, and they have told you that in all their experience of the history of insanity that seventy-five to ninety per cent. of the insane who are confined in lunatic asylums trace their insanity back to their heredity. Now, gentlemen, if that be true, and it has not been contradicted before you, you are bound as men, and honest men, to accept it as truth. The prisoner at the bar started out in life with the chances ninety to one hundred that he would become a raving maniac, as his grandfather, his uncle, his aunt and his other relatives were. It was a fearful handicap in the race of life placed upon him by his Creator. It was more than a doubtful future for him, but those loving parents appear to have kept the knowledge from the boy,

because the mother tells us that he knew naught of this lineage from which he sprung until she told him in the jail in Montreal, that his uncle and grandfather had died insane. Now, gentlemen of the jury, I ask you as honest men, in deciding this case, and the question as to whether you shall send this man to the scaffold (who, I believe, would walk to that scaffold as unmoved as he stands to-day in the dock, hardly listening or knowing a syllable that I am uttering on his behalf), when you consider all the evidence of the different acts which I will discuss before you, in Ireland and in this country, not to forget, as honest men, that he, not like yourselves, started out in life with the race not equal, but that through his ancestry his chances in life were seventy-five to ninety per cent. that when he reached the age of fifteen or sixteen years he would become insane and lose his reason. It is a tottering foundation to build upon. It is to my mind one of the strongest possible facts, which you as honest men must never lose sight of in considering the other acts of the prisoner at the bar. For one moment think, for one moment consider, that if your own child was to be put upon his trial for an act like this, and that your ancestry and lineage, that the blood which coursed through your veins and through his was tainted by the blood of the epileptic maniac and of the insane in years gone by, consider and think for one moment if you would not ask the twelve of your countrymen who were trying him, if you would not say to them, "Consider the circumstances, consider the chances." Every one of you who are sitting in that box, know the effects of heredity. You who are farmers, raising stock and animals, know how that the taints and habits of the ancestry of any one of them shows itself in the next generation, and sometimes down to two or three generations. You know yourselves that hereditary insanity may skip one generation, but in the next it may display itself. The doctors have told you so, the men of science who stood in that box have told you so; but if no man of science had got into that box and told you, you, as men of common sense, you as men of practical experience, know that it is the

fact. Now, what do we find? This terrible taint in the blood which flows in his veins, a disease which is liable to disclose itself at almost any period of time, for it is like the slumbering volcano which is liable to burst forth at almost any moment—it is brought forth by any undue excitement, by extreme sorrow, by extreme joy, by anything which calls for the quick and active working of the brain, because this terrible disease of insanity settles upon that God given quality which distinguishes man from the brute, and that is the power to think and to reason. Well now, we have this heredity clearly proven before you, and let us start out with his life's history.

The mother comes into the witness-box. She told a story of her child, an only son, an only child. Her's is a human life devoted, sacrificed to his education, to his godly training, to bring him up as other children. When you saw that mother stand in the box, you as fathers felt that she had sacrificed her life for her boy. Let me take you back for an instant to a scene of which she spoke. Let us look at this mother years gone by in the dusk of evening putting her child to sleep. I can well imagine that child before he retired at night, kneeling at his mother's knee as she tried to teach him the commandments given by God through Moses on Mount Sinai, and one of those commandments was "Thou shalt not kill." That boy heard, that young man in his early days heard it, but he understood it not then, and he understands it not to-day; and when that mother, gazing into the face of her only boy told him that story, could she have seen the terrible future which the scroll of fate would unfold to her, her voice would have been raised to heaven and she would have prayed to her Almighty Father to avert the dread blow. It is an awful fate for her. She has told you, and you must believe her story, because she has been a good, kind, and pious mother, and she told you that from his earliest days he appeared to be an unintelligent child. He was unable to articulate until he reached the age of four or five. There was a lack of intelligence, there was a want of devel-

opment in the boy. Up to the age of four or five he could hardly speak, and on account of this his mother consulted a doctor to see or know the reason why. We start therefore his childhood's days with a taint of insanity and the tainted blood showing its effects on his defective mental condition in the inability to learn as other children and to speak as other children. You of you that are fathers and have children of your own—I have not the honor or privilege to know any one of you personally, but if you are fathers, and if you have children,—casting your memory back, you can well remember how your own prattling child talked to you when he had scarcely passed the age of twelve or eighteen months. Why? Because he was intelligent, because his blood was not tainted with insanity, tracing it back or upward to his ancestors. The mother tells us that this child was a sickly child. She gave her whole time, her whole attention to the education and up-bringing of this boy, and to the age of seven years had tried to teach him herself. At that time she sends him to school, and he makes but slow progress. She can hardly teach him anything. He then goes to a school taught by ladies, and up to that period of time, (seven or ten years of age) he could hardly talk intelligently, or in a way that others than his mother or his nurse could understand him. Is not that worthy of your consideration? If that portrait of his early life be true, and there is no evidence against it, if, I say, that picture of his early life be true; is it not different from any child which you, yourselves, have known? We bring you further, until he goes to another school. He goes to a school taught by the Rev. Father Dunne, and here I wish that you should pay particular attention to the evidence of Father Dunne. We have got the prisoner now at about the age of adolescence, at about fourteen to sixteen years of age. What was that mother doing to educate her boy? Was he allowed the ordinary advantages other children enjoyed? She takes him to the Christian Brothers school, and Father Dunne, who was examined in this box, and who crossed the Atlantic three thousand

miles, because the life of a fellow being was involved ; to tell the story of his early days, tells you what kind of a boy the prisoner was. He was taught in that school during the day time, under the special care and teaching of Father Dunne, and that mother, in order that that boy might have exceptional advantages of education, engaged a special tutor Mr. Cunningham, to teach him his lessons at night, that he might stand equal with the other boys the next day. With all these advantages, with all that desire on the part of this loving and fond mother, to bring this boy to a position that she could look to with pride and satisfaction, we find him unable even then to learn. Father Dunne tells us that at moments he would seem to lose all control of himself. He would apparently have lapses of his mind and of his knowledge, or as he describes it in one instance, "his mind seemed to be like a piece of blank paper." He was fond of fire arms. He was apparently developing this mania, this homicidal mania, which in after years, with his growth, and having passed the age of adolescence, developed itself until it terminated in the terrible and awful tragedy of the first of March last. Now, this child lacked no advantages. Everything that money could do for him was done. He received a religious training. He received all the advantages of education, everything which kind and fond parents could do in the right direction for this boy was done, in order that his moral and intellectual nature, if any he had, should be properly and rightly developed. It has been said, and I have heard it, that he was a spoiled child. Is there any evidence before you to show that he was a spoiled child? Is there any? No. On the contrary, the strongest possible evidence has been put before you to satisfy your minds, that the mother, in whose care and keeping his education was entrusted, did everything possible in life to keep him within proper bounds ; to give him an education, to give him nothing more than he was entitled to, so far as liberty of action was concerned, but that he should be properly and well trained, in order to fit him for the battle of life. Can you doubt,

gentlemen of the jury, that with a training such as that, that with the advantages which he had, with all this, and that nothing more was produced as a result of it, morally and intellectually, than the prisoner at the bar, who stands in the dock to-day; can you doubt that there was something radically wrong with his mental condition, his mental composition from the day of his birth up to the present time?

Now, he is at this school. Father Dunne tells us that he was unable to learn, that what he would learn to-day he would forget to-morrow, and that he was unable to devote his mind or attention for any given length of time to a particular subject; that during the year he was in that school he made little or no progress; no advancement in education. After this he was sent to Clongoes because, as he (Father Dunne) thought there would be a more close and more strict supervision over his actions, because he was there under the control of the teachers during the day and during the night. During all the time he was in this school he is troubled with these neuralgic headaches. Father Dunne tells you that these neuralgic headaches are due to a want of cerebral circulation, that is, a proper circulation of the blood through the blood vessels of the brain, and neuralgic headaches are closely connected and allied with insanity. This taint in the blood, coming from his ancestry, showed itself in his early life by these neuralgic headaches, by this inability to learn, by this want of brain power to consider, or look at, or study any question for any given period of time.

We have him, then, at Clongoes College. He has no physical stamina. He is unlike other boys. John Ryan, a witness examined under the commission, tells you that he did not take part in the games, that he stood away from the rest of the boys, that he was by himself, that he complained frequently of these headaches. He stood unique in his character and in his actions. He was fond of remaining by himself, and one of the witnesses examined from Valleyfield tells you that even after he came to Canada he walked very much and very frequently alone on the streets. He

is sent to Clongoes. He is obliged to return back to his home because of his failing health, and because of his inability to stay there and go through the system of studies owing to his physical constitution not being strong enough and to his illness. After spending some seven months at Clongoes he returns home.

Before he went there for the last term, his father told him : " Now, Val., if you wish to study for a profession, if you wish to take any calling in life, I will put you through for it. I want you to go back to school and come home and tell me what you think you can do." He comes back and he tells his father that he thinks he will try to learn his father's business. With what success? With what success was he able to assist his father in the management of that business that he carries on so successfully himself? He was utterly unable to learn or understand the first idea of the business. Now, what do we find? From his early childhood he develops this homicidal mania, this desire to shoot, this desire to kill, because insanity is of many forms and many types, and one prominent among them all is the insanity of homicide. There is the suicidal mania and the homicidal mania. The suicidal mania is the desire of a man to kill himself, the homicidal mania is the desire of a man to kill others. Alas! how differently, how differently the one is treated from the other. When a man commits suicide through the promptings of a suicidal mania, twelve of his fellow-citizens at once say he committed suicide at a period, at a time, when there was an aberration of his mind ; but when he has the homicidal mania and kills somebody else, that same spirit which the jury bring into the box in the case of the suicidal mania is entirely lacking, and it is much more difficult for a jury to find in the latter case a verdict of insanity.

Let us consider the evidence in Ireland for a moment. The earliest evidence we have of his homicidal mania is given by Doody, who tells us about this boy shooting at his child, when the prisoner was some ten or twelve years of age. The cross-examination of the witnesses was directed to show

whether or not there was shot or a bullet in the pistol. That, to my mind, is not of very much moment, because, whether there was a bullet in it or whether there was not, the fact stands out prominently here that he fired the pistol at these children, loaded at least with powder. The evidence is that there were marks on the hand ; but at all events, the one fact which is patent, and which cannot be denied, is the fact that this boy, this young man, at the period of ten or twelve years of age was so reckless, if you will call it reckless, was so imbued with this homicidal mania which was growing in his blood, and which we find developed at the early age of ten or twelve years in the shooting of Doody's child. This was reported to the police. There is no question about the fact.

And now, gentlemen, before we enter more fully into the consideration of the Irish evidence, let me draw your attention to one fact, and I ask you when in weighing that evidence, in your chamber, when you have met to discuss this case, to consider this, that the men who have been examined under the Irish Commission are not the relatives of the Shortis family. They include the leading and most respectable citizens of the town of Waterford, men who have been Mayors of the town, the bankers, the aldermen, the police officers of his native town. Some forty-five or fifty of the men of the town of Waterford have told you incidents, which if told of one of your own children, you would be the first to say that they were the acts of a mad man, the acts of an insane man, and that he ought to be locked up. Gentlemen of the jury, have these men perjured themselves? Have the Mayors, the bankers and business men of Waterford, and the young men and the Councillors and men of position and trust there, have they all come before Judge Dugas, and having taken their oath upon the Bible, have they perjured themselves and told what was not true? These acts have taken place, and they are true. The shooting, the insane acts and proceedings of this man, from the time he left there to come here are established beyond all question and beyond all doubt, and if we were able to show, as we have, so many

of these acts, how many more, in the name of common sense, must he have been guilty of, of which nothing was heard? The learned counsel who represents the Crown here, in the cross-examination of these witnesses when they declare that he was crazy, asked nearly every one, "Do you mean to tell me that you kept the company of a fool, that you talked to a fool, that you walked with a fool, that you slept with a fool," and they say "Yes." Is it possible that the Crown takes the position that a man who is afflicted of God, deprived of his reason, is to be ostracised from his fellow men, that those in the same rank of life with him are to turn their back upon him as they meet him in the street, and to point the finger of scorn, of hatred and defiance at him, and not to speak to him? If so, then we are going back to the dark ages, and to the period of time when that same principle, which the Crown in cross-examining these witnesses by trying to cast a doubt upon their evidence, because they kept company with him, that same principle and that same idea prevailed one hundred years ago, when they burnt witches at the stake because of acts that they were supposed to have done. No. Because a man may be afflicted of God, in his mind, that is no reason why in this Christian age in which we live, he should not receive the same consideration and the same affection, nay more, than those whom God has sent here with their faculties full upon them.

Let us consider the evidence taken in Ireland. We find this young man, after the age of fourteen or sixteen years, developing the homicidal mania, the very period of life at which the scientific man told you, that this taint in blood, if it existed, would develop itself. We find this boy cruel to animals, which shows an absolute want of moral responsibility. We find him telling his man, a man who worked for his father, to take a dog down to the edge of the wharf, and to tie him to an iron railing, and the prisoner puts on an overcoat, buckles on a sword, and marches down in a sort of Napoleonic style to the wharf, and having this poor dumb animal chained to a post, draws his sword, and the moment he does it, he is seized

with a frenzy when he sees his victim before him, he makes a blow at the dog and breaks the sword on the iron railing, and not satisfied with that ; with that hatred and maniacal idea of taking life ; he is not satisfied until he kills the innocent little animal with the broken sword. This fact goes to show, that this insanity, this taint of the blood was developing itself day by day. He was growing up in the way his forefathers had gone before, and he was becoming day by day more insane. What would you say of your child, what would I say of my child, if I saw him acting in that way ? My learned friend says, " Oh, but lots of boys have killed a dog." It is true. But have boys killed dogs in the manner related there, and it is not the one fact of the killing of the dog, it is not in the fact of killing the dog as standing by itself, but it is in the vast number of circumstances, of acts proven, which characterizes this boy's whole life, from the time he was in Ireland up till the time he left to come to Canada. Imagine a boy walking along the street with a loaded rifle, and a boat in the night passes up the river, loaded with passengers, and he says, " There is a shot," and before his companion could prevent him, he fires the rifle at port hole on a boat. Is that the act of a sane man, or is it the act of a madman ? At another time, while a boat is being loaded to go to Milford, he stands on the wharf and fires a rifle at the steamer, and the bullet strikes against the funnel of it, where the sailors were working. Is that the act of a sane man, or the act of a madman ? Again, when he is over at the boat house, and sees a lady and gentleman walking along, he says, " There is a shot, and by God I am going to have it." Those are his words. Is that the act of a sane man, or is it the act of a madman ? This is the evidence. This is the evidence which has been disclosed before you in the reading of the Irish commission. Another instance is where Delandre tells you, that at the bicycle races, when they wanted to keep the crowd off the green, around which the bicycles ran, that he came holding out two revolvers, and said, " I will keep them off, and if you will put me here, I

will blow the brains out of the first man that sets his foot across on this green sward." Is that the act of a madman, or is the act of a sane man? Mr. Allingham, a lawyer there, examined, tells us the story of this boy riding in the early morning on horseback up from Waterford to Tramore, shouting and yelling and firing off pistols and revolvers in the early hours of the morning, imagining, probably, that, he was on the distant prairie shooting Indians or running from Indians? Was this the act of a madman, or was it the act of a sane man? Another witness tells of his riding his pony with his face to the tail; well now, my learned friend says, "Oh, have you never seen boys riding that way?" It might be so, but if you saw your boy riding on St. James Street in Montreal, in a public thoroughfare, riding madly through the street, and attracting the attention of everybody because of this manner of riding; if you saw somebody else's boy doing it, would you not come to the conclusion that there must be something wrong, that this man's mental condition must be affected in some way or other? Numbers of witnesses have told us that in Ireland he was known as cracked Shortis; mad Shortis, Shortis's fool. Ryan, the ex-alderman and ex-mayor of the town of Waterford, tells us that he was known as "Shortis's fool, cracked Shortis and mad Shortis." They said, "Pay no attention to him, the fellow is crazy, shooting at town clocks, doing all these mad, insane acts, prodding cattle, bringing suffering upon dumb animals." Well, now, this man was known in this community as mad Shortis. Now, what do we find? The learned Judge will tell you that you cannot find this man insane because somebody said he was mad or because he was known as mad Shortis; but, gentlemen of the jury, that is why cases of this kind should be tried before twelve men like yourselves. It may not be strictly evidence, but to men of the world like yourselves, to men who know that a sobriquet does not attach itself to a man, that a nickname does not affix itself to a man without there being some reason for it. This boy, known as mad Shortis in Ireland, how long

does it take him until the same title is applied to him in Canada? When he was in Valleyfield he was known as "le grand fou" or "the great fool." Was this without reason? The Crown will tell you it was because he wore knee breeches that they called him the great fool in Valleyfield; but in Ireland they wear them and in this country they do not wear them. Well, surely they did not call him "mad Shortis" or "cracked Shortis" in Ireland because he wore knee breeches there. But, gentlemen, that is not the reason of his being called "mad Shortis," and "cracked Shortis," and "le grand fou," it is because of his acts, it is because of his conduct, it is because they, looking in his face, noted that lack of intelligence, and saw that this man had not that reason and had not that intelligence that he should have had, and they dubbed him with the title in Ireland and they dubbed him with the same title in this country. You, as men who know the motives and passions of human nature, know well that he never got that title either in Ireland or in this country without reason or without there being some foundation for it.

Another story is told us in Ireland by the Heaneys, I think it was; the father and son were examined. This boy Heaney was afflicted with large lumps in his neck, and this man (the prisoner), with the love of blood, with the homicidal mania that characterizes him, wanted to take this boy down into one of the cattle pens to take his jack knife or some other knife and cut out the lumps that were in this child's neck, and he offered him some sweeties, some candies, or some money in order to get the child to consent that he should do it, but young Heaney's father prevented it. Is that the act of a sane man, or is it the act again of a madman? Now, surely, you cannot come to other than the one conclusion, if he had had the opportunity to cut these lumps, or cut this boy's throat, which he would have done, he would have been guilty of homicide in Ireland before he came to this country at all, and it was prevented only by the foresight and prudence of Heaney. Would he have been guilty of murder in that case? Surely not.

The Crown will tell you, and they say that because he slept with a loaded gun, because he fired off the revolver, because he rode down a railway track like a madman, it does not show that he was insane. The Crown says he could have got off on this side or on that side of the track ; there were six feet here and seven feet there, and it was not the act of a madman. In the Old Country particularly, where no man is allowed to go on the railway track, and this boy, instead of going down the ordinary road, rides right down the railway track for three-quarters of a mile or more, and the man, himself, who had charge of the gate, whom he passed against his wish, against his desire, and against his protest, and he (the gateman) writes to his directors, saying, that the boy put spurs to his horse and rode down the track like a madman, two years ago. Was not the gateman right when he characterized him a madman? We do not rely upon an isolated fact to establish insanity. If the Commission had proved only one of these things, then the argument of the crown might be well taken, but it is a series of madman's acts from the earliest development of his childhood up to the day when he left to come to this country, upon which we rely. Now, you will say, why was he allowed to come here? Did the father know of all this? The father is a respected, revered and loved man in the community in which he lives. He enjoys the respect and confidence of his fellow citizens, and they did not tell him, but hid from that father these acts of his son, first, because he was not a great deal in the town of Waterford. For other reasons, he did not and would not know of his son's actions and conduct, and secondly, because of the deep seated prejudice there is in Ireland against an informer. When the Irish witnesses are examined, and when my learned friend asked them, "Why did not you tell the father, or why did not you tell the mother, or why did not you inform the authorities of these acts?" they said, "Is it an informer you would want me to be?" The deep seated prejudice, born of their relations with the empire, is such, that if there is anything that is abhorrent to the soul of an

Irishman, it is to have applied to him the term of "informer," and these men, honest men, who had much at stake in the community, did not tell the father or mother, or the authorities, of the acts of this boy, because they did not want to have applied to them the hated, loathed title of an informer. That father, when he got in the box, when he was asked if he knew of the doings of his son, and he told you he knew only of his riding down the railway track, and of his shooting at Doody's child, and when that man, raising his hands and eyes to heaven, swore before you, as God was his judge, that it was true, was there one of you sitting in that jury box that doubted that that old man told the truth? Was there one of you who doubted him? If there was, you have the ratification of it in the fact that every witness examined upon these different points, tells you that he did not tell the father. Have you any doubt as to the honesty of this man, do you think that that man comes before you here with a lie on his lips to save his son from the gallows? Not so, not so. As the old man said, "If my boy had forty lives, I would sacrifice them all before I would tell what is an untruth." The father knew it not, but the father saw that his child was unsteady, that he was unable to learn his business, that he could not even teach him to count twenty-five bullocks in a paddock, and he thought, as many others in the old country think, that this land of the far west is a land of freedom and a land of hope, and where there is a chance for the young for their development, and he said, "I will have him go, I will let him go to that distant land where he will be among strangers," thinking that the boy relied too much upon his father and mother, knowing that they had the means to gratify his every wish and every desire, and that if he was thrown upon his own resources, that coming in contact with nature and with the struggle for life, that it would develop his independence, his self-reliance, and, perhaps, make a man of him, which his living in the old country, knowing that he was under the shadow of his father and mother, would not develop. Is it to be doubted? Do you doubt it? Would you not yourselves have done the same

thing? Those of you, who came from the motherland, and can understand that overcrowded population, how that they look to this western land of ours, and think, if they can only cross the sea, if they can only come to the far west, that there is hope, that there is a chance to succeed in life, and that father, when he sent his boy here, he did not send him to murder and kill the people of this country, or of Valleyfield, but he sent him here because he thought and because he felt that when he was put upon his own resources, he might develop and might be somebody.

The mother had trained the child—the mother told you in the box that she opposed his coming here. It was like tearing her heart strings out to send her only boy across the sea, to send him alone among a strange people. That mother did not wish him to come, but she yielded implicit obedience to her husband's will. He came here, and proper and necessary provision was made for his being taken care of. That mother, with the filial affection which does her credit, and for which we respect and admire her, when he came here in September, 1893, that loving, faithful mother followed her boy, three thousand miles across the stormy Atlantic, to see how he was getting along in this new country. She stays here a period of time with him in order to help him and see whether or not she can get some position for him. Is that to your mind evidence that that father and mother wished to desert their child, that they wished to send him here into this community to shoot and kill at will, or is it not to your mind the best evidence that they desired to take care of him, that they were actuated by proper and pure motives in sending him to this country, and that when he came here, that they were prepared to take care of him as best they could.

Now, so much for the Irish evidence. I have not given you all of the incidents, all of his insane acts that have been proven under the Irish commission; you have heard it read, and you know it. I have only to relate to you sufficient of them to satisfy you, and to shew you, that up to the time of his coming here the insane taint in the blood was shewing

itself, that the terrible affliction under which he suffered was developing in him.

Now we have him in this country. Is there any change in his manner? Is there any change in his actions? Is that same insane love of revolvers, firearms, rifles, and guns, and desire to shoot and kill still present? Does it manifest itself immediately on his arrival in Canada? We find that it does. He goes to live with Mrs. Mulcahey; we find from the evidence of Mr. Matthews, and Mr. and Mrs. Mulcahey, that he is putting cartridges on the stove, that he is running up four or five stairs at a time, and jumping down stairs, that he is putting matches in an envelope to send to the Old Country, that he is promenading up and down the halls with bare legs. Now, my learned friend says a man goes around on board ship with his bare legs, and the Royal Scotch regiments travel with their legs bare; I say that has nothing to do with the case, the question is, with all these different things, is it not the act of an insane man, to be seen in a public building in that condition, where public offices are? We find him in the Cadillac Hotel with those same characteristics, with these same insane actions. We find him in the Queen's Hotel, as proven by the evidence of Mr. Malabar and Mr. MacKay, trying to wash his feet with his stockings on, in the wash basin, out on the sidewalk firing or shooting or flourishing revolvers in the public streets of Montreal, laying down upon the seats on Dominion Square with a revolver alongside of him. Are these the acts of a sane man? Are these actions which you yourselves would like to be guilty of? My learned friend will tell you Mr. Malabar is mistaken, Mr. Mackay is mistaken. They will tell you "We called a man in charge of the wash-room and he did not see him; Mr. Matthews did not see him; Mr. Crierie did not see him;" but, gentleman, that evidence is negative evidence, and he might have done all these things without Mr. Matthews or Mr. somebody else seeing him. I did not see him shooting John Loye and Maxime Lebœuf in the office of the Montreal Cotton Co. on the 1st of March last, but there is no doubt

that he did it. I could get a million witnesses to go into that box and say they did not see him, but the fact remains that he did it. It is very easy to get one hundred witnesses to say that they did not see him wash his feet in the basin or fire a revolver on the street, but we have two witnesses, Mr. Malabar and Mr. Mackay, and they both tell you that he did it. Mr. Matthews and Mr. Crierie, who were brought up to contradict these statements, they tell you that Mr. Malabar is an honest man, that he is enjoying the confidence of the authorities of the Queen's Hotel, that he is working there yet, and what he says is true, and you have a right to believe it. Now, gentleman, these are the facts, these are facts sworn to by these people. Mrs. Lewis and Mr. Roe in the box tells of his conduct in the Cadillac Hotel. Now, all these stories, these actions on the part of this man, this insane desire to flourish revolvers, this homicidal mania, this desire of his to do these things, which nobody else would do, all, to me, or I think to you, as sensible men, point only to one conclusion, and that is, that this man must be deranged in his intellect and must be insane.

When he comes to Valleyfield, what do we find? The same actions, the same characteristics, the same deeds committed by him in the old country, against common sense, against the dictates of prudence and of judgment, and different from what anybody else under like circumstances would do. Well, now, what is this man? We have this picture. I do not wish to take much of your time, but I ask your patience for a while. I have been some time in drawing to your attention the evidence from his early childhood up to the time that he is in Valleyfield, and up to the night of the first of March. Now, we have on the first of March this man with all these characteristics, guilty of all these acts, these insane acts; acting as he has done in the old country, in Montreal, in Valleyfield, and above all that, above all these acts, we have what is still stronger, and what is more conclusive, and what is irresistible evidence of his insanity, and that is, the delusions and hallucinations which he had. Now,

what were these delusions? You have it established by the evidence of three or four witnesses, that he says, he carried a revolver in Ireland because his father at certain seasons of the year went mad. The doctors told you that that is the surest possible symptom of a diseased mind, and of the insane condition of a man; he carried revolvers because his father went mad at certain seasons of the year, a delusion pure and simple, an absolute delusion, an insane idea which had no foundation in fact, and which was the creation of his distemper and deranged mind. Another witness also tells you that he carried a revolver because under certain conditions a man may want to protect himself. We have this evidence from the Irish commission, but we have that evidence supported and confirmed by the testimony of Morrison, a witness produced on the part of the Crown. Mr. Morrison tells us that the prisoner at the bar went up to his house to a Christmas dinner, and in speaking to him about revolvers, he said, that the prisoner told him he carried revolvers in Ireland to protect himself, and to protect his father against the cattle buyers—the cattle and pig buyers—a thing that has no existence in fact, that exists only in the diseased imagination of this man, and according to the medical testimony, and according to the books, the most absolute and convincing proof of the insane condition of the man, and of the diseased condition of his mind. He had an idea there that his father went mad, and that, if he did not carry a revolver to shoot his father, his father would kill him. He has an insane idea that the cattlemen are going to kill him, and are going to kill his father, and forsooth he must carry a revolver. He comes to this country with his moral nature undeveloped from his early childhood, or in a rudimentary condition, with hallucinations, and delusions developed from the time that he reaches the age of fourteen or fifteen years, so that we have him at that time a natural imbecile, and implanted upon his natural imbecility is the insanity as evidenced by the delusions which existed up to the time that he came to this country. When he came here, had these delusions

disappeared? We find, from the evidence of Miss Anderson and Jack Anderson, that he, at their house, has visual and aural hallucinations, that is to say, he hears imaginary sounds, he hears imaginary voices, imagines people looking at him, that people are walking on the verandah, and asks Jack Anderson to come out on the verandah and to close the blinds or shutters, to see whether these people are there or not. You cannot attach too much importance, you cannot attach too much importance to the existence of these hallucinations; they are the most dangerous in the disease of insanity; a man who has aural or visual hallucinations, is the most dangerous class of lunatic, and they often lead to homicidal results.

Now, on the night of the first of March, we find this boy with this heredity, as I have pointed out to you, with his history as it has been stated to you under the Irish Commission, with his history as it was continued in this country, with his hallucinations and delusions; on that very night, with a severe attack of this neuralgic headache, which headaches are the premonitions of an attack of insanity, from which he was suffering. This is the condition of the boy, and I desire to consider with you the evidence of the tragedy. Was it premeditated? Was it for the purpose of robbery? of murder? or was it the act of an insane man, without premeditation and without malice?

We have considered all the evidence leading from the boy's childhood up to the day on which he is charged with having committed the offence. On the night of the first of March he goes to this mill, and meets there those who were his friends, those whom he had known for some considerable period of time. The Crown will tell you that he went there with premeditation and malice, that he went there to kill, to rob. What you have to consider, because that is the vital and the all important part of this trial—is, if he went there with the deliberate intention, with the knowledge of his acts, with the desire to rob, with the purpose of killing, and with a complete and full knowledge of the responsibility of his acts,

and if he did, then he is guilty, but if, on the other hand, the act of killing was an act without premeditation, without malice, without knowledge of right or wrong and without knowledge of the quality of the act, then you are bound to say that he was insane at the date of the commission of the act. If the prisoner was sane, if he was a criminal, if he was a robber, if he was an intending murderer, then you must find that he acted in a way that a sane man under like circumstances, and with like intent, and with like desire would have acted. There were fifteen thousand dollars that night in that mill. There were five men in the office—Loye, Lowe, Wilson, Lebœuf and Maxime Lebœuf. There is no evidence in the first place of any accomplice, There is no evidence that this young boy of twenty had discussed or considered the practicability of robbing this mill with anybody ; he had no accomplices ; he had no person with whom he could advise, and he went to that mill that night as he had been accustomed to do, many days and many weeks before. He went to that mill, why ? For the purpose, as the Crown will tell you, of robbing it of fifteen thousand dollars, and, if necessary, killing four or five of those people, because, remember this, he must have known, if he was a sane man, if he was a man with the mental calibre of you, gentlemen of the jury, who know what you have to do, and the responsibility of your acts, he must have taken into consideration the fact that there were four or five men who were guarding that treasure that night, and from whom he could not take it except by slaying them. Now, what did he do ? How was he equipped for this terrible murder which the Crown tells you that this young boy of scarcely twenty was about to accomplish ? A small pistol, 22 calibre, that one shot out of 25 could not possibly kill a man, which was the only revolver he had. They will tell you he had this chisel. Now without an accomplice, with a small, little revolver, which you are entitled to look at, and take into your jury room, could he accomplish his object ? After I have shown you, as I have the history of this boy, with all his defects, with his mental

alienation, with his heredity, with a taint in his blood, with the chances of his becoming insane, you are to say whether, under these circumstances, when he went to that mill on the night of the first of March, with this little pop gun of a revolver, even giving the Crown the benefit of all the doubt about this chisel, that he went there to rob and carry away fifteen thousand dollars, with the chances of having to kill four or five people, and was he at the time a sane man or was he a madman?

It is established beyond all question that this man had revolvers with Dansereau in the hotel, with Parker in the hotel, that he could have got revolvers from almost any person, and if he had gone there with the intention of committing murder, with the intention of robbing that mill, and carrying away \$15,000, in the name of common sense, in the name of reason, if you think that he was sane and in possession of all his faculties, could you imagine him going there to do this terrible deed, with a little four barrelled pistol carrying a 22 calibre bullet, and nothing but a chisel, with four or five men guarding the treasure? The Crown may say, he knew that Lowe had a pistol there. He did not know that he could get the pistol from Lowe.

Now, if he had gone there for the purpose of committing murder, when he got possession of Lowe's pistol, would he have sat quietly and cleaned it for a full hour. There was no object in cleaning the revolver, there was no purpose or reason for him sitting there one full hour, while they were boxing this money in small tin cans, and making it all the more difficult for him to carry away, because, whether the revolver was cleaned, or whether it was not cleaned, it was equally efficacious, so far as shooting the people was concerned. He gets possession of this revolver, with his insane, idiotic, boyish idea of playing with revolvers; he goes to this desk in the middle of the room, and for one full hour occupies himself in cleaning it. Think you that is compatible with the theory of the daring murderer, of the robber, of the criminal, of the man who is look-

ing for blood and for money? Would a murderer go there and get this revolver, sit and clean it for an hour, eat apples and talk generally with the boys who were there? Not at all. If that man had planned a robbery, if that man had gone there with premeditation, if he intended that night to rob that mill, he would have been amply provided with means of offence and defence, he would have had revolvers, he would have had the necessary means to carry out his plans and his projects.

When he got this revolver (you know the evidence must be absolutely conclusive to your mind, that the boy was always trying to find out all he could about revolvers; he was fond of catalogues, he wanted the names of makers, he wanted the model numbers, he wanted the names of pistols, and when he saw this pistol he asked the name of it, and afterwards said he had not taken the model number) he took it back after he put it in the drawer, and after Lowe had loaded it, and said, "I want to get the model number." The Crown will tell you, he got it back for the purpose of committing robbery, for the purpose of committing crime. Well, if that was so, he had the full run of that office, he had every opportunity, he could have gone to that drawer where those cartridges were, and if he had gone there for the purpose of committing robbery and murder, why in the name of all that is common sense when he once got possession of that revolver from Lowe, which was absolutely all that was necessary for him to commit this crime, did he give it back to him, as he did not know he could get it back from him again? Think you, if he had gone there for the purpose of committing crime, if he had gone there for the purpose of committing robbery, if he had gone there in the hope, as the Crown may tell you, that he would get the pistol that Lowe had; when once he got possession of the weapon, which was all essential and important for him to commit this crime, to shoot these people, why did he return it? Would he not have kept it? How easy it was for him to have gone to the drawer where the cartridges were, and said, "Now, I will go on with this

thing," but, instead, gave back to Lowe the only weapon, the only arm, that was in his possession, with which he could perpetrate this deed ; he secured it once more to get the model number. As the witnesses, Lowe and Wilson, told you, he what they called "broke" the revolver to see the model number ; he could not do this without breaking it, that is, doubling it over. Now, gentlemen of the jury, your own common sense tells you if he got it at that time for the purpose of shooting, for the purpose of committing robbery, if he used as a pretext getting the model number, there was no reason why he should "break it and look at it," but he got it and broke it, and without malice he turned and pointed it towards Wilson, and a shot was fired and Wilson was struck. What does he say to the medical men about it? He had been oiling it, he had been cleaning it, he had oiled all its parts. He had asked for a screw-driver, and had taken the revolver all to pieces, and Lowe objected to that in the first place, but he afterwards said he could put it together again. It was very easy for it go off now. He turned it that way, because he was in the habit of pointing revolvers at people. He had pointed them at Miss Anderson, and at people in the Queen's hotel, and at people in Ireland, and at everybody he got a chance to point them at, he did. Why? Because he was a homicidal maniac. Well, now, when he pointed that revolver at Wilson, it went off. Was it an accident or was it intentional? The prisoner at the bar tells you through the doctors, and the statement is, that it was accidental. My learned friend will say, that that is not evidence, the learned Judge will charge you not to take into consideration any statements made by the prisoner at the bar to the doctors after the commission of the crime, but I will ask you to follow me for a few minutes to consider the actions of the people who were present at the time this shot went off. I say to you, gentlemen of the jury, that every man in that room, Loye, Lebœuf and Wilson and Lowe, thought and considered that that first shot which was fired there was an accident, that it never occurred to them for one instant to suppose that

that first shot had been fired by the prisoner at Wilson in anger, or for the purpose of robbery, or that it was anything else than an accident. What happened? Loye says, "I will go to the telephone and telephone for the doctor"—that is Loye who was shot. Lowe runs to the rescue of Wilson to support him, to see what is the matter with him. Now, if Loye and Lowe, when that first shot was fired, had supposed it was a shot other than accidental, would one have gone to the telephone to call for a doctor and the other have gone to the support of Wilson? Not at all. If they had supposed that the first shot was fired with the purpose of murder, killing or robbery, they would have immediately thrust themselves upon the assassin there present, because idle and useless would it have been to have gone to the telephone to have telephoned for a doctor, or to have supported Wilson, and let the would-be murderer and the man who, it will be pretended by the Crown, had murder in his heart, free there to have shot them at his own sweet will. But all those there considered that first shot an accident, that that revolver went off and struck Wilson without intention, without the purpose of robbery, without the purpose of killing. The prisoner says it was so, the actions of every man who was present in that room bears out that theory in its entirety, and their actions are not compatible with any other theory whatsoever, but that they considered that the first shot fired was an accident. After that, then comes in the disease of the mind, then comes in that lapse of self-consciousness, then comes in the effect of this insanity, then strikes him the taint of his ancestry in his blood, his insanity takes full possession of him, and he becomes utterly irresponsible and thoroughly indifferent to what then takes place. That is his story. That is what he says. That is the history that is compatible with the theory and the knowledge of the insanity such as he is afflicted with. Now, if he had gone there with intent to rob, if that man was sane, if that man was in possession of all his faculties, why, when he saw the first shot fired, and that he had killed Loye, when Lowe

and Lebœuf had got into the vault, and he must have seen then that there was no chance of getting the money, what would have been the first motive, what would have been the first instinct to a sane man under like circumstances? It would have been self-preservation; he would have said: "The game is up, I have failed in my efforts, I cannot get this money, I have killed two men, I will be discovered in a few hours, the only chance for me is in flight, I must leave this building. At six or seven o'clock in the morning at the very latest, men will come here; there are two or three men on guard who are visiting this building, and they are liable to turn up at any minute." Would he have stayed to shoot Maxime Lebœuf after he shot Loye and Wilson, and with Lowe and Lebœuf in the vault? Would there have been any object in his remaining there. If you reason out his actions on the doctrine of a sane man he would have seen the game was up; he would have seen that his only chance was in flight, and, small as they were, he would have gone, but does he do that? No; he remains there, the madman he was, irresponsible, his mind deranged, his mind chaos, like a man in his sleep, like a man who walks in midnight darkness without knowing what he does, with a lapse of consciousness, without any moral responsibility, without knowing the consequence of his act, what does he do? He goes around. He calls out there, in his madness, "Maxime! Maxime!" as you will see when reading the evidence of Lebœuf, who was in the vault, not that Maxime Lebœuf called him first, but he knew he was there. He called out "Maxime! Maxime!" and he said, "What do you want?" and he answered with a revolver shot. He gratifies his over-ruling weakness, the over-ruling character, the over-ruling destiny and spirit of the whole man, to kill and murder. Homicidal impulse was there. He kills, he murders, he follows it up; it is in his blood, it is in his nature, he does not know what he does. If he had been sane, would not he have gone away? Was there any chance for him to get Lebœuf and Lowe out of that vault which had the cash in it? Would

he, as a sane man, have thought for an instant that these two men would have come out of that vault and given him a chance to shoot them? Was the following of Wilson into the weave room the act of a sane man or the act of a maniac? Is not the taking of the telephone receiver and smashing it up in his fury and madness evidence of his frenzied condition? On what did he break it? Not upon the head of Maxime Lebœuf, because the doctors do not show that he had bruises. Where did he break it? The Crown will tell you it was for the purpose of stopping communication between the mill office and the central telephone office. There was no necessity to smash this gutta percha telephone receiver all to pieces. Then, again, why did he smash the lantern which Lebœuf had? This was smashed to pieces, and they cannot find the glass. The place was lighted up with electricity. Why smash this lantern? Here was a man in the frenzy of madness, without reason, without right, and without knowing what he did, remaining there until the very hour that the men who were to arrest him came, and what does he do? He remained there until the end of the paroxysm, and he surrenders and gives himself up. He says, "I killed these men, and I do not know why I did it. I cannot tell you anything about it." Is there any remorse? Is there any regret? If you had been guilty of this crime, if I had killed these men, if any man in this Court House, other than the prisoner had done it, would there not have been remorse? If for a moment your moral nature had become warped to the extent that you would commit this crime, my God, is it not possible that you would feel sorrow and regret for the men you had killed? But here is none. He is arrested. He writes this letter which the Crown asked Walter Cooke about. We produce the letter sent to Miss Anderson. What is that letter:—"Telephone home, anticere. If Bob McGinnis says or does anything about dirty stories I will make it hot for him." Can you imagine a more insane production by an insane man than that letter. Take it into your jury room with you, look at it, written by him

immediately after his arrest, and then what takes place? He says, "Shoot me, I do not know what I did." He is taken to the cell; he is put into the cell with the blood of his victims besmearing his hands and clothing, with the blood of the men that he loved, with the blood of the men who say they were friends of his—he is taken into the cell, and like an innocent child he lies him down and sleeps. Is that the act of an insane man or is it the act of a sane man? If that man were sane, if he realized the full responsibility of his act, if he knew, as he should have known if he was sane and in possession of all his mental faculties, that the scaffold awaited him, and it was only a question of working out the operation of the law until he would reach it, think you, he would have slept that night? Would any one of you, if by any chance, or would I, or any man in this Court House, other than the prisoner, if by any chance we found ourselves in similar circumstances, and saw the most terrible fate which can await a human being, that disgraces his family and brings ruin on all connected with him, and sends him to meet his God, could he have lain down and slept? Would he not, like Macbeth, who, after having murdered Duncan, King of Scotland, imagined he heard a voice crying:—

"Macbeth doth murder sleep,
Glamis hath murdered sleep,
Macbeth shall sleep no more."

and have fancied he heard the voices of his murdered victims in the darkness of his cell?

A sane man who committed crime, a sane man guilty of this deed could never have slept, could never have lain down like a tranquil child two or three hours after the commission of a terrible tragedy like this, with the blood of his victims reeking on his clothes, and his hands besmeared with it, and turned his face to the wall and slept—slept quietly, so that when his keepers came into the cell, they had to touch him to waken him up.

Now, you will be told by the Crown, "Oh, but he said to Lowe, stop still or I will shoot you," and immediately shot

the other man. Well now, the man who is walking in his sleep, the man whose self-consciousness is gone, exercises a certain amount of precision or thought in his acts, and it is impossible to say, that because of that act alone, or of saying these words that the man was in possession of his faculties. It is no use to say that when he went to the vault and said in a whining voice, "Come out, Come out, John Loye is gone, or Hughie Wilson is shot." It is as rational to conclude that this was only carrying out the desire of this man for blood. At that time he was under a lapse of self-consciousness, not knowing what he did, because you have the evidence of that man's natural imbecility, you have the evidence before you of a diseased mind, you have the evidence of the alienists, who went into that box, who told you that that man was a natural imbecile, that insanity had supervened upon it, that he was irresponsible, and he knew not when he committed this tragedy the difference between right and wrong.

Now, so much then for the tragedy. It was a tragedy which rang throughout the entire country ; it was a tragedy which aroused all right thinking men and they said "this is a terrible crime," but if it was perpetrated by an insane man, if the whole thing was done by a man irresponsible, who knew not what he was doing, who did not know right from wrong, who knew not the consequences of his acts, then so far as the act itself is concerned, it is no more than the stone which rolls off the side of a mountain and wrecks the railway train as it passes, and kills, one, two, three, or one hundred human beings. It is the act of an inanimate thing, it is the act of an individual whom God, in his infinite wisdom, has deprived of reason and of responsibility, and how much better is it to say that this man in the commission of his horrible tragedy was not responsible, was not sane, than to think that without reason, or without right, a young man in the full bloom of his early youth, sane, as you will be told by the Crown, without any reason, heir to a large fortune, son of a devoted father and mother, no object, no purpose in committing robbery, because if he was sane, if he knew the consequences of his act, the

amount that he could possibly have got there was only some fifteen thousand dollars. What would that have been to him? He must have known that in a village like Valleyfield this large amount of money carried away in the early morning, the office strewn with the blood and corpses of his victims, a hue and cry would inevitably have gone forth from one end of this country to the other, and as well might he have tried to escape the avenger of death as to escape conviction and arrest after having perpetrated a crime like this. What was he doing? Sacrificing his whole future, sacrificing his father and his mother, hastening them to an early grave. For the purpose of what? Of getting fifteen thousand dollars, when there awaited him the inheritance of a rich estate. Gentlemen, the thing is against common sense, against reason, against judgment, because there is no motive and there is no reason in my mind for the commission of this crime.

Now, the crime is committed, and the tragedy is done, could he have carried away this money? It was done up in little tin boxes, or nearly the half of it. Was there any provision for him to carry it away? Where was he to take it? Had he made any provision to go away? Was there a team of horses waiting to drive him across the lines, or to go anywhere? Did he have a portmanteau or valise? Was there anything at all? Was it not the act of the wildest mad man that could be conceived? Now, he is arrested, he surrenders himself to the authorities. I have detailed, and I have gone over the details of the Irish evidence. When, on his arrest, his poor father and mother are notified first of all by cablegram, sent by the president of the Montreal Cotton Co., Mr. A. F. Gault; he cabled, "Shortis, Waterford. Your son must be crazy. He has badly wounded three men, and perhaps fatally too." He tells you, as you heard in his deposition, that he said he had badly wounded, and, perhaps, fatally, these men, because he wanted to break the news as gently as possible to his poor mother across the Atlantic; but he does say, and he says in the most unequivocal language possible in that cable, "Your son must be crazy." When you read his

deposition, he does not, by the language which he used, or the statement that he makes; he does not say that he said, he must be crazy, for the purpose of breaking the news to her but he broke the news by stating, that he wounded these people, instead of telling her that he had killed them. The first idea that flashes in the mind of the president of the company, when he knows the circumstances; knowing the young man as he does, he comes irresistibly and immediately to the conclusion, that the young man must be crazy, that he must be insane, and so cables his mother.

After having committed this homicide, he is arrested; he was brought before justice, and barely escaped lynching at Valleyfield, and is finally committed to stand his trial, and is moved to the prison at Montreal. We made an application for the examination of the prisoner by men of science, by men of experience in the study of mental diseases, and after various attempts, we obtained the order for the examination of this prisoner. Four men have been brought before you, and have given their evidence as to their opinion as to his mental condition, based on the evidence adduced before you in this Court, as also upon interviews with the prisoner. This evidence, I deem of the most vital importance, and I ask your kind and close attention to me for a few minutes, while I deal with that part of this case. The men who were examined are men who stand in the front rank of their profession in this country. Dr. Anglin made a study of this case, covering a long period of time, from the 25th of June or July, up to the present time; he had a large number of interviews with the prisoner, as stated, and considered the matter, and with his experience in Verdun Asylum, with his experience in Kingston Asylum, with his experience in Philadelphia, he comes before you and takes his reputation in his hands and tells you that this man is a natural imbecile, is diseased in his mind, and is irresponsible and knows not the difference between right and wrong. I do not propose at this late hour, because I wish to finish my address to-night, to discuss in detail the evidence as given by these men. You

have it before you. Dr. Daniel Clarke, of Toronto ; Dr. Charles Clarke, of Kingston ; Dr. Bucke, of London ; men who, with their experience with the insane, represent altogether an aggregate of some seventy years. These men are men well known in the profession ; they are men who have made a study during their whole life of mental diseases ; they are men who, of all the men that have come before this Court and have given evidence before you, are the most competent to speak upon this question, and they tell you, after having sat from day to day in this Court, and heard unfolded from that witness box the testimony of all the witnesses regarding this young man, and from their own examination of him, they tell you that he is insane, they tell you that the case is one of the strongest cases of insanity that has been brought before the courts of justice within their recollection ; they tell you that in their asylums where there are hundreds, and in Dr. Bucke's case a thousand poor afflicted humanity, that there are many of them there not so insane as the prisoner at the bar ; they tell you more, they tell you, with his poor father and mother sitting in front of you ; that the affliction which God has put upon their son is incurable, and that his mental disease and imbecility has so attacked his constitution that never can he be cured, there is no hope of a cure, that the only hope, that the only thing possible for these two poor parents who sat in front of that jury box, was that their son, their only child, in the event of your saying that he was insane, should be confined in a lunatic asylum for the rest of his lifetime. It is a dismal out-look for them at best. These four doctors, men of science, men who have written upon the subject, men who have made the subject of mental diseases the study of their lives, they, who, of all others, are most competent to speak of it, come before you, and they tell you that he is insane, and on the night of that fateful tragedy, he knew not what he was doing, he did not know the responsibility of his act, that he was unable to distinguish right from wrong.

What have the Crown done ? The Crown through this

trial have insinuated that this man who bears upon his face the stamp of imbecility and insanity, who has stood in that box from the hour that this trial began until now as immutable as the rock which you see on the mountain side, who has as little realized the terrible position he is in as the wooden dock within which he stands, who is the person above all others who has the least care as to what the result of this trial may be, is feigning. I myself have seen that man I think four times in all from the time that I first entered upon this case. Since this trial began I have not even exchanged a syllable with him. I saw him four times in the Montreal jail, and there I saw that his condition mentally was such that I could not receive, and did not receive one idea or one thought which could be used for the purpose of defending him here, as he is incompetent to give it. Do you imagine that that man from what you see of him there is feigning insanity? The Crown have intimated here in this trial, they have told you for the purpose of impressing you with it from the very beginning of this trial until now, that that man was feigning insanity under the direction and study of somebody! I repel the insinuation with all the scorn that my nature is capable of, and do you as men believe that that thing that is in the box there, could have stood for four long weeks, immutable, unobservant, without even quivering a muscle or turning a hair, when his father and mother's hearts were wrung with anguish, while giving their evidence in that box? Do you think it is possible for the human heart not to give away under such trying circumstances as these? Do you think that the vilest criminal, devoid of all natural feeling, could stand in the dock there and see the mother, her heart wrung with anguish, shedding bitter tears, and never turn his head? Do you remember the incident that took place here between Smith and his father? I did not see it, but I am told that when his father stood up and said that his mother had been insulted in this Court, that this young man never so much as turned his head to look what it was. Is it possible? Give him credit for being the vilest criminal. Let

us say that he is feigning insanity. Let us say that he has been trained to do it. Let us say that he is a clever man, and with it all I say that it is utterly impossible, that the human frame and the human system could not undergo, could not stand such a strain for four long weeks, if sane? Do you think he would stand before twelve of his fellow-countrymen on trial for his life and show no recognition of what was going on, and appear as indifferent as he has done? Gentlemen of the jury, these experts have told you that he is insane. They have told you, and if you want evidence, if it were possible to get stronger, it is in the fact that the other doctors sat in this Court, took notes of this trial, and listened to every word of the evidence, and then they would not go into the box as medical men and express their opinion as to whether he was insane or not.

There is another phase of this trial which I must refer to, a phase of this trial which I refer to with regret—with regret. The Crown tells you that this man is sane, the Crown tells you that he is responsible for his acts. The Crown have missed no opportunity to secure evidence, have ransacked this country from one end to the other, have spared no means, have done everything, have traced every act and all the conduct of this young man, have even interviewed his barber, who could not speak his language, even to his shoemaker, and everybody else, to try and show that he had reason and was and is sane. When they were made aware in the early part of May in Montreal, when we asked for permission for doctors to examine this man as to his sanity, the Crown had notice then as to what our defence was. On the 29th June we went to examine witnesses in Ireland as to this man's mental condition. When did the Crown send a doctor to examine him? When was the farce of asking to have him examined on the part of the Crown gone through?—just eight days before this trial began, and on the cross-examination of the witnesses in the box an effort was made to show that in order to determine the sanity or insanity of a man it required months of study, yet the Crown, for the first time in

the history of this trial, eight days before the opening of the case, sends Dr. Villeneuve to examine the prisoner. Did you ever in all the administration of serious criminal justice hear of a farce equal to it? What did he do? He goes down to the jail. He is selected as an experienced and scientific man on this question. He goes to see the prisoner. Mr. Vallee, the Governor of the jail, says he spent but five or ten minutes with the prisoner, and he asked him certain questions, and this poor silly maniac says, "I am told by my lawyers not to say anything." Does not this show the insanity of the prisoner? If his lawyers had told him to say nothing, could you have imagined a more insane act than for him to say to the governor of the jail and the representative of the Crown holding the sign manual of the Crown prosecutor, that the lawyers had told him to say nothing? What does this scientific man do? What does Dr. Villeneuve do? He did not dare to get into that box to tell you of that interview. The Crown did not dare to put him into the box, they did not dare to put him in, and ask him, and allow us on cross-examination to ask him, why it was that he did not examine the prisoner at the bar. Why Dr. Villeneuve sat in this court house for four weeks, accompanied by three other doctors, and the last two days Dr. Girdwood came here, and you saw him sitting reading the evidence taken at the trial, and I say, with all the responsibility of my position before you, that the facts of this case justify me in saying, the Crown only sent for Dr. Villeneuve there to try and get a refusal or some such reason, that they might come before you and pretend that we have put up some sort of a job, so that the prisoner should not be examined. Do you believe, as sensible men, if the Crown had any intention of examining their experts, if they had desired to know what his mental condition was, that they would have waited until just eight days before this trial to send an expert to the jail to examine him; and then when this poor silly fool said, "I do not want to be examined," this physician of the Crown walks off, folds his arms and makes no further attempt. If he had gone to Mr. St.

Pierre, if he had come to myself, or if he had gone to Mr. Foster, or in fact to anybody, if there had been any desire on his part to examine the prisoner at the bar, the mode was easy, he could have done it ; but he never said a word, he never wanted to examine him, and when he brought these four men who sat alongside of the Crown prosecutor, and took notes day by day of the evidence that went on, and when we asked for an opportunity for Dr. Bucke to examine the prisoner, the Crown here, in the presence of the judge, asked that their expert should be allowed to go too, and when he went and examined him, when they took that evidence, why did not they put him in the box ? Why was not Dr. Villeneuve examined ? Why were not the four doctors, who were put in the box by us, contradicted by Dr. Villeneuve ? Gentlemen of the jury, there is only one irresistible conclusion for you to come to. If this man could have gone into that box, after having heard the evidence here, and sworn that that man was sane, do you think the Crown would not have put him in ? Do you think that if Dr. Villeneuve could have gone into that box, and said that the prisoner was sane and responsible for his actions, that the Crown would not have put him ? We dared the Crown to put them in ? We dared them to put Dr. Villeneuve in that box, because, if Dr. Villeneuve had gone into that box, as an honest man, as I believe and know him to be, he would have sworn and would have been obliged to say, from the hearing of the evidence, and from his experience and science and knowledge, that the prisoner was insane, and that he was not responsible for the acts with which he is charged, on that fatal night the first of March last.

Well now, gentlemen of the jury, do not be humbugged if the Crown tells you, " Oh, I had this galaxy of doctors around here to give me information about the prisoner, to tell me something about mental diseases." He may tell you that. You may be told that Dr. Villeneuve was not here as an expert. If he was not here as an expert, why did he go to the jail to try and examine the prisoner as an expert. If he

was not here as an expert, why did he go into the prison cell with Dr. Bucke and examine him? Why was not he called and given an opportunity to state the result of his experience and the result of all the notes of the prisoner's mental condition he took in Court here? If there is any one incident in this whole trial, if there is one thing which ought to convince you as honest men that this man is insane, it is the fact that we have called our four experts and that the Crown brought their physicians and had them here throughout this whole trial, and they did not dare—they did not dare, to put them in the box, because their answers would have killed the case for the Crown. We are not playing with the life of a fellow being here. It is not a question as to whether a fellow being is to be executed wrongly or not. The Crown are here to do justice. The Crown are here to do right. The lawyers who represent the Crown are supposed to stand impartially between the Crown and the subject, and if these men thought he was insane, in the name of common justice, in the name of all that is right, in the name of everything that appeals to an honest man's heart, why were not these men put in the box? Why was not Dr. Villeneuve put in the box? We could not summon him. We had closed our case. We could not make our main evidence in sur-rebuttal, and ask him whether this man was sane or not. If in the consideration of this case, if in weighing the evidence on one side or the other, if in looking at it you should have any hesitation, you should have any doubt, then look at the facts as they are, look at the position that the Crown has taken, look at the fact of their only examining the prisoner eight days before the trial, and look at the fact of them not putting their experts in the box, and say is the Crown in good faith, are they desirous of getting common right and honest justice in this case, or are they desirous of erecting a monument to their own glorification and honor, and cementing the foundation stone in the life blood of Valentine Shortis?

It seems to me, gentlemen of the jury, that were I in your place, that were I sitting in the jury box, that had I taken my

oath to do justice between our country and the prisoner at the bar, and had I seen the Crown, armed as they were with their medical experts, sitting here from day to day, taking notes of the evidence, and that they did not dare to put them in the box, it would be to my mind as the judgment of a man who knows something of the world, and to you, gentlemen of the jury, the strongest possible proof that there was something wrong and that there was reason, and that the only reason was that they could not contradict the testimony of the experts examined for the defence.

The Crown in rebuttal have examined a good many witnesses. They have tried to show you that he was intelligent. They have brought witnesses to say that they had conversations with him, and the first witness that I wish to deal with (because the hour is getting late, and I feel that I cannot go over this case as minutely as I would like) is the witness Simpson. Mr. Simpson comes into the box, and he tells you, "I was kind to this boy, and always did what was right with him. He has no complaint against me. He tried to kill me ; he formed a conspiracy to shoot me. He was an intelligent boy." Whether he tried to form a conspiracy to shoot him becomes of little moment if the evidence is clear and convincing of his insanity, of his imbecility. The point that bears on Simpson's mind is to show the boy's intelligence. Now, the prisoner was in Simpson's office for five weeks, and he (Simpson) goes into that box and says he was intelligent ; he says he knew his business, that he did it well, and when he said so, would you believe it, he (Simpson) had not even examined the results of his labors, and he knew not whether the work had been done well or not. The quotation book which we went through showing mistakes. showing that all that boy had to do was to copy into this book what a schoolboy of ten could have done, and all through it he has not been able to copy a page devoid of mistakes. Simpson says, "Oh, more than that, he is a mechanical genius. We wanted to get a machine for singeing cotton, and I was talking with him about it, and he says, 'Oh, I know about a better

machine than that, and I will send to Chicago for the plans.' ” Mark you, gentlemen of the jury, a machine for singeing cotton. These plans came ; they are on the desk here, obtained, as Simpson says, for the purpose of constructing a machine for singeing cotton, and he sends him with the plans to Sparrow. Read the deposition of Sparrow. Simpson tells you he told the prisoner to go to Sparrow and ask him how those plans would do as a machine for singeing cotton. The boy goes to Sparrow, and Sparrow tells you that the only question that they discussed, and what he laid the plans before him for, and what he proposed, was a machine, not to singe cotton, but to create power, to create fuel, and that he discussed these plans with him, with the idea and purpose of creating power, not for the purpose of singeing cotton ; I believe that the story of those plans is made out of whole cloth, or else, if it is not made out of whole cloth, then that prisoner had not sufficient intelligence and knowledge and concentration of mind to go from Simpson's office with those plans, under instructions to put them before Sparrow, to see whether they would do for singeing cotton, but when he got them before Sparrow with an entirely different purpose and object. Now, surely, if that boy had intelligence, surely if he knew what the plans were for, surely if they were obtained for the purpose of singeing cotton, as Simpson pretends, he would have known enough to have carried them to Sparrow's office, and say “Mr. Simpson sent those here, and I want you to look at them and see if they can be utilized for singeing cotton by gas.” Now this is the evidence of prisoner's wonderful mechanical genius. The Crown will tell you that this boy possesses genius, that this boy has intelligence, that he has knowledge, that he has a brain, that he can conceive and design, and because he can do all these, he must be sane. Why, gentlemen of the jury, the maniacs in lunatic asylums are those who sometimes design the most intricate things in machinery, but if there was an act on the part of this young man showing insanity,

it is this. We have a large cotton factory with a large steam power, he comes with this grandiose idea of his, this mania of his, and he says to Sparrow, "Here is what you want to put in here; you are burning coal and wood to generate your power, but here is something else by the use of petroleum, or some other thing, you can cheapen your work." Take out this machinery (which cost thousands and thousands of dollars), he leaves the idea of singeing cotton by gas, but he has got the idea of completely revolutionizing and changing the power of this mill. Is that the idea of a sane man? Is it not the best evidence to your mind of the shifting, changing, uncertain, unstable mind of the prisoner? Now, they put in another machine, a bell. Young says, "This is a great stroke of genius, this shows his natural ability, this shows his mechanical genius." Well, now, what does Sparrow say about the plan? He does not pay any attention to this scheme of his. What does Young do when he gets the plan of the bell? Throws it into the drawer and never looks at it, considers it undeveloped, no good, and the thing is only unearthed when this trial is about to take place, and when they want to show by acts of this kind, by these small things, that this man has genius, brains and ability.

Well, now, run over briefly the witnesses for the Crown in rebuttal. They say that he had some intelligence, but when they were cross-examined you will find that their opportunities are limited to very few interviews, a few conversations but of a few minutes' duration. Well now, a man may be insane, a man may be irresponsible, a man may not know right from wrong, and he may be able to converse on some subject in an intelligent way with the ordinary individual, and I do not mean to say for one instant, or to throw any reflection on the average citizen's intelligence, but I say this, that as a man who is trained to build a mowing machine knows best how to do it, so is a man who is trained to study the human mind with the exterior evidences of it, is the best able to pronounce

an opinion on it, and not the ordinary person. I myself might meet a man, you might meet a man, and he might be perfectly insane, and at the same time in casual conversation we might not recognize it or know it, and the evidence of the Crown is that of a few people who have had small opportunities of seeing the prisoner, and of only talking in a general way with him upon general topics, and then but few conversations, and consequently unable to judge of his sanity.

Now Mr. Gault was examined. A letter was produced, written by the prisoner at the end of January last. The Crown will tell you that this letter shows thought, consideration, memory, judgment, intelligence, knowledge, and all those qualifications or faculties which go to make up the sane man. This letter is, to my mind, the wail of a moral imbecile. If you read it from the beginning to the end, you will find that he starts out that it is a horrible thing that he should be accused of this conspiracy, and then he winds up and says that it is ridiculous. So that he says a thing which is perfectly ridiculous is horrible and terrible, and then he goes on to tell how he will have to leave the town and to beg and ask for protection; and throughout the whole letter, from the beginning to the end, is evidence of a boy who had no moral force, who had no moral sense, who had no reliance on himself, and was weak, and through it all points to egoism and vanity—the prevailing vanity of the boy which comes down from his early childhood up to the present day. He writes to Mr. A. F. Gault, the president of the company, one of the merchant princes of Montreal, and he signs it “Your friend, Valentine Shortis.” “Your friend!” A man he is asking favours from! He tells him how he should govern and manage Simpson, and throughout the whole letter there are fifteen grammatical errors or words mis-spelled. I cannot give the entire details. I have them here, but you take the letter yourselves, and you read it over, and you will find that the grammatical construction is bad, that the spell-

ing is bad, that the whole thing does not show that genius and that intelligence which the Crown would hope you to draw from it ; but, above all, I wish to say that many insane men write letters. I had a letter to-day, from a gentleman in Toronto, saying that he had seen in the papers some reference to this letter. Why, he says, "I was on the Grand Jury at the last criminal term in Toronto when we visited the insane asylum, and an insane man, a maniac confined in that asylum, wrote us a letter and said he was wrongly confined there. It was an intelligent letter, discussed the situation, and discussed his case. We thought there must be some wrong done, but the doctor said, "Just ask him about one question," and immediately his insanity developed itself. Well, now, the insane write sometimes intelligent letters. You must know yourselves from your experience, and the books on mental science are full of it, that many of the insane act at certain times intelligently, apparently with reason and apparently with judgment. Your dog, that comes to meet you as you go to your house at night, will give you evidence of his affection and of knowledge ; your horse knows when it comes time for him to be fed at night, will show intelligence ; the dumb animals display intelligence, they display judgment, they display feeling ; they know something. But for all that, is a maniac, is a man who is insane, is a man who is a natural imbecile, to be so different from his fellow-men that he cannot eat, that he cannot drink, or think—that he has not to a certain extent some affection, some love, some regret, some hate, or some fear? If you ask that a being shall be deprived of all these attributes, you ask that the human mind shall be lower than that of brute kingdom, that there is nothing left but the piece of inanimate clay which lies before you. That is not the humane idea of the insane. We have men who know something and can judge somewhat, that are insane, and know not the difference between right and wrong. We have also men who can write verses, and contribute to literature, men who are insane and

in asylums and show evidences of genius, and I will give you at the moment a verse that was written by an insane man :—

Shut up in dreary gloom, like convicts are,
 In company of murderers. Oh ! wretched fate,
 If pity ere extended through the frame,
 Or sympathy's sweet cordial touched the heart ;
 Pity the wretched maniac, who knows no blame,
 Absorbed in sorrow, where darkness, poverty and every curse impart.

This not only shows intelligence, but it shows that God-given quality, genius ; these verses are the sad effusion of Thomas Lloyd, a man-slaying maniac in Bedlam. Take those lines and put them alongside of the letter that the prisoner sent to Mr. Gault, and see whether you see more intelligence in the wail of Thos. Lloyd, a man-slaying maniac in Bedlam, or the letter written to Mr. A. F. Gault by the prisoner at the bar.

Now, I have reviewed at perhaps greater length than I expected the evidence as given before you. The case has been a long one, and a large number of witnesses have been examined. This young man's father and mother have been before you in this Court. Can you believe that the prisoner at the bar with a father and mother who doted on him and were ready at all times to give him anything and everything he might want or require, would commit the crime of robbery to the extent of fifteen thousand dollars, because, forsooth, he owed a petty sum for board, or had borrowed a few small amounts around Valleyfield ? These small debts will be held up to you by the Crown as evidence and reasons why he should perpetrate the terrible crime of murder in order to better accomplish his designs for robbery ! He could easily have obtained the money from his father. He was insane. Why, to show you how this insanity was working on this boy, to show you how this blood of his, tainted as it was from the generations before him, was asserting itself through his veins, we find this boy, up to about two months before this tragedy, had written his mother almost weekly, and for the six weeks previous to the tragedy had not written

his mother a letter or a line. It shows how he was daily, hourly, weekly and month by month becoming worse and worse, the moral obligations having less hold upon him. Why, think you, if he wanted fifty or sixty dollars, yea, five or six hundred dollars, and had written to that loving mother, that it would not have been forthcoming. His father and mother, rich and wealthy as they are, would have given their life blood for him to save him from any wrong or humiliation, that mother who crossed the Atlantic last summer and lived in Montreal for two or three months, and day by day, and from hour to hour visited her ill-fated son in his cell. Picture to yourselves the terrible position of that mother visiting her only child in a cell, he indifferent, unknowing. Taking into consideration the terrible position in which he was, what cared he that he had broken his mother's heart? What cared he that perhaps, as the result of his acts, his mother would be sent to an untimely grave? What cared he that that family name in Ireland would be disgraced, would be brought into ruin, would be reviled before the public and the world, and pointed at because one of their offspring had sacrificed his life upon the scaffold? What cared he for that? Why, this poor, silly child cared more for the color of his mother's eyebrows, the scratches on her arms, and the rings on her fingers, than anything else. His poor mother saw him from day to day, ameliorated his condition, soothed him as best she could, but with it all her heart broken, because he did not understand and did not seem to realize the position he was in. She crossed the Atlantic again and called before that commission all of these people who were examined in Ireland. The father with the mother crossed again to this country, come here and stand here day by day before you in a community that knows them not. They come here because they say you are human, because they say that you are men, because they say you are prompted by all the actions which govern good and honest men, because they know that you believe in the principle and the doctrine of Christ,

“Do unto others as you wish that they should do to you,” and I ask you as *men*, I ask you, if you have any question or doubt, if there is any doubt upon your minds that this man is insane, give the benefit of the doubt, not to the prisoner at the bar, because to him it makes little difference whether he is locked up in a lunatic asylum for the rest of his life, or whether you take him to-morrow forth from this door and execute him upon a scaffold which you may erect behind this Court House ; he is indifferent to it all ; but I ask you, if you have any doubt, give the benefit of that doubt to the aged father and mother, that mother who at this moment is lying on a bed of sickness in the hospital of the nuns, suffering with heart disease which ere morning may carry her off ; but, oh God ! if you have any doubt, send these people back across the Atlantic, let them think that we are good people here, let them think that we have good hearts, and do not, do not, God forbid ! by your verdict open three graves at the same time.

Oh, gentlemen, I have but one more request to make of you. I will soon have ceased speaking. The last words on behalf of that unfortunate father and mother will have been said, and to-day I feel strongly that there is perhaps no position in which a man could be placed so responsible, to my mind, as the lawyer who stands before a jury and pleads for the life of a fellow-being.

All that I wish to ask of you is simply to follow the just dictates of your conscience and your heart, give us justice ; and in the event of your coming to the decision that the prisoner is sane, then I invite you to come with me, when the dread sentence which you will pronounce shall have been carried out, and stand around that grave in the potters field, see the prisoner lying there, each one of you put a sod of earth over his grave and say in good faith, putting your hands on your heart, “This is my work, it is well done, it is well done.”

Let your verdict be such, that it will be to you an immortal Crown of Justice and of Right. Let it be such, that when

you are passing through the valley of the shadow of death, it will be possible for you, on looking back over your life's history, to feel no remorse and no regret for the verdict which you are to render in this case. Rise above all personal feeling, rise above all local prejudice. Do naught but justice, and if you give that justice which we expect from you, the only verdict that you can render is one in favor of insanity, which consigns the prisoner for his life to the darkness of a lunatic asylum. Strange, strange demand it is, for a man to ask twelve of his countrymen on behalf of another, to consign that other for life to a lunatic asylum, but such is the only request which can be made for a man like the prisoner, afflicted of God and deprived of his reason.

This is all his father and mother ask of you, and they feel that their request will not be in vain.

Gentlemen, I have finished.

DONALD MACMASTER, ESQ., Q.C., OF COUNSEL FOR THE
CROWN.

Before addressing the jury, I wish to call Your Honour's attention, not by way of argument however, to two or three authorities in reference to the question of moral insanity, and to the weight that should be given to the medical expert evidence. I do not pretend to argue the point at all, but only to call Your Honour's attention to it, and I shall be very pleased to send you the books.

The first that I refer to is the case of the Queen against Oxford, which was tried by Lord Chief Justice Denman and two associate Justices, and which is reported in 4 Wallis, State Trials, New Series, page 552. Lord Chief Justice Denman in charging the jury said:—"With regard to the medical evidence, the professional skill of those gentlemen may enable them, perhaps, to judge in a great many matters with greater accuracy than other persons, but after all, in this case your common sense must be the arbiter of the circumstances. You may, however, place that weight upon the medical gentlemen which you conceive the whole circumstances warrant, and you may be guided in examining the facts by their testimony. There may be cases in which medical evidence as to physical symptoms is of the utmost consequence, but as for moral insanity, I, for my own part, do not consider that a medical man is better able to judge than a person acquainted with the ordinary affairs of life, and bringing to the subject a wide experience. From the very facts of the case it has been said that insanity is to be inferred, and Dr. Davis has said that supposing a person without any apparent motive should act as it is proved the prisoner acted, he would consider him of unsound mind. It would be a dangerous thing to conclude from the high and

dangerous character of a crime that the party, unless insane, could not be capable of committing it. It is dangerous to make the crime itself a proof that the party must be exempt from criminal punishment. Although there may be no motive, no adequate motive, it cannot be said that that shows insanity. For there can be no adequate motive for any crime whatever. If a party should be charged with killing his wife or child, that is a great crime, and if no motive should appear the jury would not conclude he was mad. The learned judge read the rest of the medical evidence and told the jury to consider whether there was a real absence of the control of reason, or whether the conduct was that of a very violent and perhaps cruel disposition."

Then, may it please the Court, I cite the case of the King against the Earl of Ferrers, which is reported in 19 Howell, State Trials, at page 954. I refer there to the speech of the Solicitor-General of that day, which was afterwards approved by Erskine not only when at the Bar, but when on the Bench, and later, approved in the more recent case of the Queen vs. Macnaughton, 4 Willis, State Trials, New Series, page 847, and cited as an authority there by the then Mr. Cockburn, afterwards Lord Chief Justice of England, although he was acting on behalf of the defence. Your Honour will remember that the Earl of Ferrers was a member of the House of Peers, and that he was tried for shooting his own servant, but being a Peer he was entitled to be tried before the Peers, and he was tried and convicted by his Peers and hanged. The plea was insanity. Mr. Yorke, the Solicitor-General, in addressing the Peers, said :—"My Lords, in some sense every crime proceeds from insanity. All cruelty, all brutality, all revenge, all injustice is insanity. There were philosophers in ancient times who held this opinion as a strict maxim of their sect ; and my Lords, *the opinion is right in philosophy, but dangerous in judicature.* It may have a useful and a noble influence to regulate the conduct of men ; to control their impotent passions ; to teach them that virtue is the perfection of reason, as reason itself is the perfection

of human nature ; but not to extenuate crimes, nor to excuse those punishments which the law adjudges to be their due."

I also call Your Honour's attention to the case of Boughton vs. Knight, in the Law Reports, Vol. III., Probate and Divorce, page 72, to which I referred before, the judgment of Sir James Hannen :—" It is essential to constitute responsibility for crime, that a man should understand the nature and quality of the thing he is doing, or that he shall be able to distinguish in the act he is doing, right from wrong. Now, *a very small degree of intelligence is sufficient to enable a man to judge of the quality and nature of the act and whether he is doing right or wrong when he kills another man ; accordingly, he is responsible for the crime committed, if he possesses that amount of intelligence.* And so in reference to all other concerns of life—was the man at the time the act was done of sufficient capacity to understand the nature of the act ?"

Then, Your Honour, I beg to call your attention to the opinion of Lord Campbell as to the weight that should be given to medical or skilled witnesses. I cite from Taylor on Evidence, p. 79, section 58, (1st volume) : " Perhaps the testimony which least deserves credit with a jury is that of *skilled witnesses.* These gentlemen are usually required to speak, not to facts, but to *opinions* ; and when this is the case, it is often quite surprising to see with what facility, and to what an extent, their views can be made to correspond with the wishes or the interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of expressing a candid opinion. Being zealous partisans, their belief becomes synonymous with faith, as defined by the Apostle, and it too often is but the "substance of things *hoped for*, the evidence of things *not seen.*" To adopt the language of Lord Campbell, "*skilled witnesses come with such a bias on their minds to suppose the cause in which they are embarked, that hardly any weight should be given to their evidence.*"

Then one authority from Archobold as to the divisions of unsound mind in law.

“Every person at the age of discretion is, unless the contrary be proved, presumed by law to be sane, and to be accountable for his actions. But if there be an incapacity, or defect of the understanding, as there can be no consent of the will, so the act cannot be culpable. This species of non-volition is either natural, accidental, or affected ; it is either perpetual or temporary ; and may be reduced to three general heads : 1.—*A nativitate, vel dementia naturalis* ; 2.—*Dementia accidentalis, vel adventitia* ; 3.—*dementia affectata*.

1. Of the first, or *dementia naturalis*, is idiocy or natural fatuity. *An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity without lucid intervals ;* co. Litt. 247 ; *and those who are said to be idiots* (Mr. Macmaster : Your Lordship will observe that the term “idiot” includes “imbeciles.”) *who cannot number twenty or tell the days of the week, who do not know their fathers or mothers, or the like ;* but these instances are mentioned as tests of sanity only, and are not always conclusive ; and, although idiocy or natural fatuity is in general sufficiently apparent, *the question whether idiot or not, is a question of fact triable by a jury, and ought to be clearly made out, in order to exempt the party from punishment*. One deaf and dumb from his birth, who has no means of learning to discriminate between right and wrong, or of understanding the penal enactments of the law, as applicable to particular offences, is by presumption of law an idiot ; but if it can be shown that he has the use of understanding, which many of that condition discover by signs, then he may be tried, and suffer judgment and execution, although great caution should be observed in such proceedings.

2.—Adventitious insanity, or *dementia accidentalis* proceeds from various causes, and is of several kinds of degrees ; it is either partial (an insanity upon some one subject, the party being sane upon all others) or total ; permanent (usually

called madness) or temporary (the object of it being afflicted with his disorder at certain periods and vicissitudes only) with lucid intervals, which is usually denominated lunacy.

3.—The vice of drunkenness, which produces a perfect though temporary frenzy or insanity, usually denominated *dementia affectata*, or acquired madness, will not excuse the commission of any crime."

Archbold's Criminal Pleading and Evidence, p. 21.

ADDRESS OF DONALD MACMASTER, ESQ., Q.C., OF COUNSEL
FOR THE CROWN, TO THE JURY.

May it please the Court, Gentlemen of the Jury :—

I promised you a few evenings ago, that when I came to address you, I would endeavor to be as brief as possible. Of course you know that this is a very important trial, and it has been a very long one, and it takes some time to gather together the different facts, and to present the different views that strike one with reference to them. Notwithstanding that, I think I can keep within the time I mentioned to His Lordship—three hours—so that when you have heard me for that length of time, I will take my leave of you.

You have experienced great inconvenience, in being practically cooped up in this Court House, like prisoners, for over a month, but you must remember that you have been, and are, rendering a great service to the State ; and, if you have suffered inconvenience in being so kept, and if your health has suffered, you will remember that it rarely falls to the lot of any men to be called upon to discharge so important a duty as you are discharging, and very rarely, if ever, has so great a tax been placed upon the endurance, the attention, and the health of a jury.

Now, the prisoner here is charged with the murder of John Loye, in Valleyfield, on the first of March, 1895, and there can be no doubt whatever that there has been a murder in the eye of the law, unless there is some excuse for it. You know that murder is the greatest crime that can be committed against the laws of God and man, and the excuse that is given must be a good excuse, if the prisoner is to be relieved from the great responsibility he takes when he sheds his brother's blood. But, gentlemen, our laws, in their humanity, have provided that under certain conditions a man who

slays his fellow-man may be excused, and these conditions are clearly specified and laid down in the law, and they are carefully indicated by precedents in the numerous cases that have come before the Courts of Justice in this country, and in the mother country. The article of the Criminal Code (11) that relates to this subject, is not new law. The Criminal Code was enacted three years ago, and it then became the law of the land ; but, in its general features, it simply re-enacted the old law, and it re-enacted the law that has been consecrated by decision after decision, and finally settled in England. Some questions arose with regard to the law, in 1843, growing out of the Macnaghton case, and the the House of Lords made an application to the judges of England for a report upon the state of the law, and the judges did make a report to the House of Lords, and the effect of that report, which I will not trouble you with now, because I read it to the Court ; the effect of that report is, that if a man knows what he is doing, if he knows the quality and nature of his act, if he knows that what he is doing is wrong, if he knows that he is breaking the law of the land, then he is answerable before the law, and is punishable for his act. That is all there is to it, and that is all you have to decide in this case, whether the prisoner at the bar knew at the time he committed this homicide that he was committing murder, that he was taking the lives of other people, and whether he knew that committing murder was an offence against the laws of the land. Now, gentlemen of the jury, a great deal of medical evidence has been put before you with a view to enlighten you upon that subject. You have had this prisoner at the bar called all sorts of names, an imbecile, a moral imbecile, a natural imbecile, a congenital imbecile, insane, and of unsound mind ; but mere names mean nothing. You can call him by any name you like, you can call him a saint, or you can call him a sinner, but we must always come back to the great test of responsibility which is provided in the Criminal Code, and it is this : Did he know the nature and quality of the act he was doing when he took these men's lives, and did he know that

it was wrong? If he did, then he is punishable, no matter by what name he may be called.

You must, in your deliberations, distinguish, as Mr. Erskine said, in a spirit of humanity and in a spirit of justice; you must distinguish between infirmities which are misfortunes, and motives which are crimes. If, in your hearts, gentlemen, on the evidence put before you, without swaying in one direction or the other, but weighing the evidence, and giving to the evidence its proper weight—if you feel that the prisoner at the bar did not know what he was doing, did not know the nature and quality of his act—if you feel that he did not know he was breaking the law and doing wrong—I tell you, as one of the public prosecutors, that you are bound to acquit him. The public prosecutor can have no object whatever, except the furtherance of public justice; and, in like manner, and as a corollary to that, in an age when prisoners are defended by men of great ability, of great ingenuity, and of great resources, it is important that the interests of the Crown, which is but another name for the interests of the public, should be carefully guarded, and that everything should be conscientiously scanned and scrutinized. No man should be condemned, if it is clear upon the evidence that he had not responsibility towards God and towards man, because he was deprived of his reason. If he, therefore, was deprived of his reason, if he was not able to act as a rational man, if he had no sense of responsibility, if he did not know what he was doing, if he did not know he was murdering men, if he did not know he was breaking the law of his country, then he should be excused. I trust I have put that fairly before you.

The law presumes that everyone is sane until the contrary be proved, and when a crime is committed and the plea of insanity is pleaded, the law casts the whole burden of proof upon the prisoner, of showing that he was insane at the time he committed the act. And, according to the law of the land, not only is the burden of proof cast upon him, of showing that he is insane, but it must be clearly proved to your satisfaction, proved, as some say, beyond reasonable

doubt : but I will not go further than saying, it must be proved to your perfect satisfaction that he was insane within the meaning of the law. So, before you can excuse him, it must be proved to you, to your complete and perfect satisfaction, that the prisoner was insane. Well now, the next thing, gentlemen of the jury is: who is to make that proof? Why, the prisoner. He makes proof of facts and circumstances, then he calls doctors, if he pleases, to give their opinions upon the proofs. Is there any obligation on the part of the Crown to call doctors? Has the Crown to prove his excuse? Does not the law say that he is presumed to be sane, and that he has to prove himself insane, and does not the law say that the burden of proof is upon him to call the witnesses, whether professional or otherwise, to show that he is insane? And if that is so, gentlemen of the jury, how could it be argued by my learned friends here, that it was our duty to put experts in the witness box, to prove something with regard to which we had no responsibility whatever? If the learned Counsel for the defence, who are so well able to advise the prisoner, wished to add further experts to those they had, if they were not satisfied with the evidence their own experts gave them, they could have called more, they could have called a hundred if they felt so inclined, they could have put Dr. Villeneuve, who was in Court, in the box, they could have put Dr. Lussier in the box, they could have put Dr. Girdwood in the box. There was nothing to prevent them. Because they did not do it, because they did not choose to do it, because the Crown did not do a thing it was not bound to do, they make a charge of bad faith against the Crown. I think that, on a little more reflection, my learned friends, who are men of delicate sensibilities, would not have made such a charge.

Now, gentlemen of the jury, an attempt was also made to make it appear that the Crown sent Dr. Villeneuve to the Montreal jail to examine the prisoner, and they say, "Why did he not examine him? If the prisoner refused him once, he might have gone there again, and further effort should have been made to get an examination, and this sending him

was simply for the purpose of making an appearance, and getting the refusal of the prisoner," or, as Mr. Greenshields elegantly expressed it, "for the purpose of putting up a job on the Defence." I am going to relieve my learned friends' minds of that view. You know how our jails are organized. You know that prisoners are kept there waiting for their trial; but there is no obligation on the part of the Crown to send doctors there to examine them as to insanity, more especially when the prisoner on petition had obtained leave to be examined by doctors named by himself. Dr. Villeneuve was not sent to the Montreal jail to make an examination for the purposes of appearing as an expert here on the merits of this case, but I will tell you why he was sent. You are well aware that for months, as it appears from the record, it was contended that the prisoner was insane. Well now, if he is insane, he is not bound to go to his trial. If he was insane on the first of October when this trial commenced, and if the Defence wished, they might have asked to have a jury empanelled to determine that issue upon oath; and if it had been decided that the prisoner was insane then, he was not bound to go on with his trial, because it would be inhuman that a man should be tried while insane, when he could not instruct his Counsel, being deprived of the reason he should have to guide them and instruct them. Now, being impressed with the fact that the point might be raised whether he was sane or insane, whether he had sufficient mind to go on with his trial or not, Dr. Villeneuve was sent by me, as a Crown officer, to the Montreal jail to ascertain the fact, and he saw the prisoner on the 21st of September. The trial was coming on on the 1st of October, and you see, it was only a matter of the most ordinary prudence that the Crown should ascertain whether the prisoner was competent to take his trial or not, because if not, he should not be put upon his trial, which should be postponed to a later period, until his reason was restored. That, gentlemen of the jury, was the object of sending Dr. Villeneuve to the jail; and if the evidence that the experts of the defence have put in in this case be true,

and if Counsel for the defence believe it, then it was perfectly competent for them on the 1st October, when this trial was commenced, to say, "Before we go on to try this case on the merits, we have got a special issue to try, and it is this, whether our client is sane or not. If he is found insane, he cannot go on with his trial, if found sane, he will go on with it." The Counsel for the Crown should be ready to meet that contingency, and that was the object of Dr. Villeneuve's visit to the Montreal jail. But the Defence, while in possession of Dr. Clarke's report, and of testimony from other Doctors who examined this man, were ready to go on with the trial, though the evidence in their possession proved from their point of view that the man was insane. It looks to me as if they did not believe in it; it looks to me as if they had *no confidence in their own experts*. How does it look to you, gentlemen of the jury?

I am not interested, however, in pursuing this point further than to show that what the Crown did was done in good faith to meet the exigency that might have arisen on the 1st of October, namely: Whether the prisoner would claim to be relieved from his trial on the ground of insanity or not—only that, and nothing more. Now, while on that point with regard to Dr. Villeneuve, I may say this: The evidence given by Mr. Vallee shows that the prisoner declined to be examined, and that he stated that he did this on the advice of his Counsel. His Counsel appeared in the box, and have sworn that it was not upon their advice. That being so, and that being established, shows clearly what a shrewd, clever man the prisoner is, when he had wit enough not to submit himself to another doctor for examination. But this is not the first time in which the accused displayed his good sense. You will remember that the very next day after the murder was committed, he was asked for an explanation about the crime, and he answered, "Gentlemen, I cannot say anything until I consult my lawyer." Was that the act of an idiot? Was that the act of an insane man? Ask your common sense.

Now, it must not only be proved by the prisoner, and to

your satisfaction, that he was insane, that he was affected with mental imbecility or disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his acts, and to prevent him from distinguishing right from wrong, but it must be proved that he was in that state at the time the act was committed. As Mr. Erskine pointed out in the King against Hadfield, (27 Howell's State Trials 1312), it is of no account whatever that he may have been insane at an earlier period, that he may have been eccentric at an earlier period, There is no proof that he was insane. But it is of no value that he may have been out of his mind at an earlier period, if, at the time he committed the act, he was sane. So you see, gentlemen, that it becomes of the very first importance that you should inquire into the conditions of the man's mind around and about the time he committed the act. If he was sane then, it matters not what happened in Ireland, it matters not what happened in Montreal, it matters not what happened two months before. If in the immediate neighborhood of the commission of the act in Valleyfield he knew what he was doing, if he knew he was breaking the law, then he is guilty. So that, speaking of the proof relatively, the all-important proof is that immediately surrounding the commission of the crime. In the case that was referred to by my learned friend, Mr. St. Pierre, in the French language, the case of Hadfield, who was tried for shooting at King George the Third, the prisoner shot at the King in the theatre, and he was tried, and acquitted on the ground of insanity ; but as Lord Kenyon said in delivering the direction to the jury, it was proved that on the day preceding the one upon which he fired the shot at the King, he took his own dearly beloved child, and tried to kill it by violently thrusting it against a bedpost, and that this was so markedly madness that it was impossible he should have been in his right mind the next day, when he committed the act of shooting at the King. It was clearly established in that case, as my learned friend very fairly stated, that this man had been badly wounded in battle, that he had two or three sword cuts

on his head, that his brain had been touched, that he had been carried off the field a raving maniac, and had been in a lunatic asylum, and that every year, from May to the end of the dog days, he was confined in a lunatic asylum. So that you will see there is no analogy between the case of Hadfield and the case we are now dealing with here.

I make these observations, gentlemen of the jury, in order to keep your minds centred on the cardinal question in the case, the pivotal question in the case, and that is: What was the state of the mind of Shortis at the time he committed the crime? Now, before you were called upon to discharge your important duty, the prisoner's counsel obtained a Commission to go to Ireland to examine witnesses there. For my own part, I do not attribute such importance to the evidence taken under that Commission as some others do. In the first place, it relates to events, many of them very remote, many of them going back to the young man's childhood, many to the period when he was only nine or ten years of age.

I will review very briefly some of the acts he did ; but I must first call your attention in connection with that Irish Commission to this circumstance. You must remember that this Commission was taken entirely on behalf of the defence. The Crown did not ask for power to examine witnesses, because the Crown took the ground that what the jury would have to be satisfied about, was the condition of the prisoner's mind in Valleyfield while he lived there, and that it made very little difference what eccentric or criminal acts he might have performed in Ireland,—if he was sane when he slew John Loe and Maxime Lebœuf on the first of March, 1895.

The Commission was issued on behalf of the defence, and with regard to evidence adduced under it, you must remember this, and it is acknowledged, that a large amount of sympathy with the parents of the accused existed in Waterford, the prisoner's native town. It is natural that this should be so, and I do not mention it as a reproach. It is perfectly natural that there should be a large amount of sympathy with the unfortunate father and mother, and it is also natural that

little escapades, little pranks of youth, things that were thought nothing of at the time, should have become greatly magnified now, in turning them over in the minds of people, and particularly when it is made to appear that in an exaggerated form they might serve a useful purpose on behalf of the defence. My learned friend, Mr. Greenshields, stated that the leading people of the place came to give evidence. Some of the leading people of the place came to give evidence, others who did not belong to the place, and others whom we would not call leading people in the place—at least, as I understand what the learned counsel meant—came to give evidence, and some of it was very extraordinary evidence. Some people living on the poor rates came forward to give evidence. That is no reproach; a poor man can tell the truth as well as a rich man, and a poor man and a poor man's son and child and widow are entitled to as much consideration as a rich man's. But as I said, some of these people came forward, and gave very remarkable evidence. What do you think of the attempt to prove the prisoner insane because he rode backwards on a horse? Have not many of you, when little boys, been put on a horse, looking backwards? Have not some of you ridden at times standing on a horse when you were boys? I was brought up in the country myself, and it was not surprising to see a boy put by his father sitting backwards on a horse, as a joke, or even to see a boy attempt to imitate the circus people, and ride standing. And yet it is solemnly sworn to by a witness, that he had lived forty years in Ireland, had been in the United States, and that he never saw a person sit backwards on a horse, except the prisoner. Why, so far from that being a remarkable fact, some of the best trained Russian and French regiments are taught to sit on a horse backwards, so that they can defend the army when moving in retreat. It is an historical fact, and I have seen it myself, and my learned friend Mr. St. Pierre, who is a soldier as well as a lawyer, knows it as a fact. Then, it is mentioned as a mad prank, that he tried to upset a boat by rocking it from side to side whilst on the water. I asked the witness if

he was brought up by the river side, and he said no. That accounts for it. Because, sitting in this town where you now are, is there one citizen of Beauharnois that has not often seen boys rocking boats from side to side? My learned friend said that leading men and bankers came up and gave evidence. It is true we had one banker, a Mr. Brett, who came up to give evidence, and what do you think was the evidence he gave? He thinks this boy is out of his mind, and when he was asked for his reasons, his reason was that he tried to get into the same railway carriage one night, in which the witness and another man were, and that the prisoner proposed to come in, and insisted, saying that if they would not let him in, he would break the door in. This gentleman, Mr. Brett, and another man were occupying the whole car, and they wanted to lie down and have a sleep, and did not want a third man. This young man wanted to get into that car with friends, in preference to another one with strangers. They were all bound for the same town; and because he wanted to travel with his first-class ticket in this first-class car, which he had just as good a right to travel in as Mr. Brett and his companion, and insisted on his right to get in, or rather protested against the violation of that right by the unwarranted attempt to exclude him, Mr. Brett thinks he was insane. But that is not all. Would you believe it that when asked to give any other reason, Mr. Brett gave this? He said that on that same evening his friend and himself went up to the bar in the refreshment room at the railway station to take a drink of whiskey and soda, and that they asked young Shortis to come and have a drink with them, and that he actually refused to take whiskey and soda, and went down to another part of the counter and took a glass of soda and milk. Which was the more sane, the young man of sober habits who took his soda and milk, or the people who asked this young man, whom they thought irresponsible, to drink spirituous liquors?

The evidence given in Ireland abounds with like eccentricities, and with very grave eccentricities, too. When I

opened this case, I made a statement to you as clearly and as fairly as I could, as to what the facts of the case were. I may be wrong in my opinions, but I will try to be right with regard to the facts of the case. You had an opportunity of checking these facts, and you know, now, whether they are in record with the statements I made, and I make this same remark in this connection. I tell you frankly, that I am not going to try and escape from the position taken up by the Defence, that some of the acts of the prisoner in Ireland are of an extraordinary character, if true. Let us take the act of shooting at the Milford boat, when there were passengers on it, and when there were men working on it. He did not, it is true, shoot at the body of the boat, but he shot at the smoke-stack. He had been long accustomed to the use of fire-arms. He was allowed to keep fire-arms in his own father's house. We have evidence, that when his tutor, Cunningham, was there teaching him, he had pistols in the house, and that he fired one off in order to startle the tutor. We have evidence that the father and mother knew that he kept fire-arms in the house. He had been allowed his own way. He was a spoiled boy. My learned friend, Mr. Green-shields, said there was no evidence to support that. I am going to call your attention to the evidence on that point, but very briefly. It was taken under the Irish Commission :

(John Kiely.) Q.—Was he looked upon as a spoiled boy ?

A.—He was.

Q.—Was he looked upon as a lad who had too much liberty ?

A.—Yes, people said so at all events.

(Jeremiah Lillis.) Q.—He was a wild young man, I suppose ?

A.—Yes.

Q.—Too much of his own way. Too much freedom ?

A.—He appeared to have that.

(James P. Cunningham, his tutor.) Q.—Had he any restraint over himself ?

A.—From my judgment of the boy, I never spoke to him

crossly. I rather yielded to his peculiarities, that is the only way I got anything at all out of him. If he said anything unreasonable, I approved of it, or silently passed it over.

(Kate Cooney, a servant employed in the house.) Q.—Was he a very much petted boy by his father and mother?

A.—He was rather petted.

(Mary Maher, also a servant in the employ of the Shortis family, was asked, He was petted by his father and mother? And she answered, Yes.

(L. A. Ryan, the alderman,) in reply to a question, says, His mother, I think, thought he was perfect.

(Edward Thomas Murphy,) was asked, Well, was it not commonly reported, or was he not regarded in town as a boy who was spoilt by having too much of his own way?

A.—He was so regarded that people were afraid of him.

Q.—But was he not generally looked on as having been spoilt because he got too much of his own way?

A.—Well, some might do that, but those who knew him intimately could not regard him in any other light but as a fellow who could not be controlled.

Now, gentlemen, that is the evidence with regard to his being a spoiled boy. Why was he allowed the use of these pistols in his room? Why was he allowed to have those knives? Why was he allowed to have a pony to ride over the town, into the shops, and into his own father's house? Why was he allowed the use of a bicycle, if he was in the habit of acting the way he did? The father tells you quite candidly that he took no control and no charge of the boy whatever, but left the boy entirely to his mother, and I do not know that the father can feel quite free from responsibility to-day. This was an only son, this was an only child, and the evidence of his own father to-day is that he took no care of his education, or practically of his bringing up. It was all left to the mother, who petted him, and the evidence shows that he was a spoiled boy from the beginning up to the time that he left the country. Now, being uncontrolled and getting out of scrapes as he did, he went on from bad to worse

until in his conduct he practically became a self-willed monster, and nothing less. Why, gentlemen, you see that he fired at the Milford boat. Is it the act of a fool? The Defence say so. I say it is the act of a criminal, and the law says it is the act of a criminal. He fired at the Doody child, and they say that is the act of a fool. Would that lock him up in a lunatic asylum, or would it lock him up in a penitentiary for life? What do you say, gentlemen, insane or criminal? He fired at a steamer going up the river—not the Milford boat this time—when there were people upon it, and thought it a good joke. He had friends with him, yet nobody said anything about it. What do you say to that, gentlemen, insane or criminal? The law of the land says criminal. He took up a pistol and pointed at young Delandre once, but did not shoot. I will not hold him to too much account for that, for they do not know whether the pistol was loaded or not.

He saw a man and a woman three hundred yards away. He took up his rifle and said, "By God, there is a good shot and I will have it;" but he did not shoot. The man prevented him for the moment, but the man says he moved aside afterwards, and that he might have taken a shot, but he did not. I will not hold him to too strict account for that, for the weapon may not have been loaded, and it is not sworn that it was loaded. He fired at the town clock, and he fired in halls. What are these acts, gentlemen? Are they not the acts of a criminal, and do they not ear-mark the criminal? Now, my learned friend, Mr. St. Pierre, went into a long argument in French to show that this pistol with which he fired at the Doody child was loaded, and practically argued that the bullet must have taken a circuit along the winding of the child's arm, and left the black mark, although the skin was not broken. Well, gentlemen, I do not believe that pistol was loaded. I will say that much for the prisoner, I do not believe it was loaded, and I do not believe it could mark the child's arm with powder at a distance of forty-five feet. And more than that, a few days afterwards, a sergeant of police was brought up; and he read the record with regard to it because

there had been an investigation, and the charge was for shooting a pistol "loaded with powder"—not one word about bullets. It is utterly impossible that there could have been bullets or shot in it.

Well, then, gentlemen, there is the evidence of Mr. Moore, the old man who says the prisoner shot at him in the yard, and that the bullet struck a tree, and not a word passed between them. Do you believe that that happened, and that there was not a word said about it for two years? It is next to impossible to believe it. It is said that many of these things were not told or dwelt upon, because in Ireland they have such an aversion to being called informers. That may be, gentlemen, in certain respects; but Mr. Allingham, a lawyer there, examined for the defence, said that that feeling exists with regard to political offences, with regard to agrarian crime, but not with regard to the ordinary events of life. For surely the kind-hearted, generous Irish race would not withhold from this father the information he should receive, that his son was a bad boy, and that he was acting criminally, not that he might be punished or put in jail, but that he might be reformed, and that the father might take an interest in his reformation. But if you believe the story that he fired at Moore, that is a crime. If you believe the story that he fired at Shallow at one hundred yards, with a revolver, and that the bullet struck a tree and took a piece of bark off, twelve inches by seven, and that the old man went on working without taking any notice of it, or looking up, and without saying a word to his family about it when he went home—if you believe these things, they do not make the prisoner a fool, but they make him a criminal.

The next point I wish to draw your attention to is the boy's physique. Now Dr. Clarke, of Kingston, when he examined him in July last says, "I found the prisoner a well built, athletic, young fellow, of probably nineteen or twenty years of age." There is his condition of physical health. Mr. Dobbyn, the first witness called for the defence, said, "The prisoner was a stout, strong, healthy young fellow."

William Cavanagh said : "Shortis was a fine, active young man."

James O'Donohue said : "Shortis was strong, hardy, and laughing," and O'Farrell said, "He was a very athletic young man. He was full of spirits."

John H. Farrell said : "Shortis was a stronger and abler man than myself, and would throw me just the same as a baby." Mary Maher said : "Shortis was a big, strong man." Robert Dunne said : "Shortis was a rough young lad," and (when examined here) he also said, "A fine robust boy." Thomas Phelan said, "Shortis was a good horseman." Edward Thomas Murphy was asked :

Q.—Was he a healthy young man ?

A.—Well, he was.

Q.—And in good health ?

A.—As far as I know he was in good health. All that was wrong with him was his manner.

Now, gentlemen of the jury, I want to get the facts before you, with regard to his health, and with regard to those eccentric and extraordinary acts performed by him, before I call your attention to the question of heredity, because you know, insanity is not more transmitted than any other disease. In Ireland, Dr. Garner was examined as a witness for the defence. He is a very learned man. He is the chief superintendent of the Clonmel Lunatic Asylum, and when I cross-examined him about this, he said, "*I must tell you that insanity is a physical disease, and it results in a derangement, whether primarily or secondarily, of the nerve centres. There is nothing mysterious about insanity. It is as much a physical disease as any other. You ask me the question, would insanity be transmitted by an insane person ? I answer, that any bodily disease might be transmitted !*"

Now, that is the characteristic of insanity, and that is the position as given by Dr. Garner, a witness for the defence. It is just in the position of any other bodily disease. It might be transmitted, and it might not. Whether it has been, or not, remains to be seen, as a matter of fact. That is a plain

answer—that is common sense. Some of the other doctors that have been examined here said, that there would be a pre-disposition, that is to say, it would not be improbable if it re-appeared afterwards in some of the descendants, but Dr. Garner puts things plainly, and says, that it is no more transmitted than any other disease. He says, “You ask me the question, Would insanity be transmitted by an insane person, and I answer that any bodily disease might be transmitted.”

Well, now, gentlemen of the jury, that being so, I ask him the question, Whether the tendency was not to work insanity out of the human frame, out of the mind ; whether the tendency of nature was not to choke it off, rather than to perpetuate it? And this is the answer that the same doctor gives. He says, “There is no doubt that if there is a pre-disposition to insanity, the weakest spot is hit as in any other disease, and if there is a low physical state, and a predisposition to insanity, it will work its way in that direction, *and per contra, if the individual is strong in physical health, the probabilities would be against it breaking out.*” So, gentlemen, you have the evidence of Dr. Garner, a specialist, an expert, and a witness for the defence, that if a man is physically strong, (and I proved from the evidence that the prisoner is physically strong, and that he was an athletic boy) the tendency is to work out the predisposition, and if an individual is strong in physical health, the probabilities are against its breaking out. So, that is the condition of affairs, gentlemen, that you are not to assume that this young man was insane, because his grandfather suffered from disease of the brain—softening of the brain. And even if his grandfather was insane, then, according to the evidence of the defence, the probabilities are against the disease breaking out in the prisoner, as he is strong, active, and healthy. You can judge for yourself whether he is not a strong and active man, on the evidence that has been put before you. It is true, he may not have been strong, as a child, but many a one, not strong as a child, becomes a strong man ; and the evidence of Dr. Clarke shows

that he found him a fine, strong, healthy, athletic fellow, and this shows the condition he is in now, and was in at the time of the commission of the crime, which, according to Dr. Garner, rebuts the probability of insanity breaking out. But, gentlemen of the jury, there is more than that with regard to the insanity question; it matters not who among his relatives was insane, if it is not proved that he was insane himself. There is, at worst, only a predisposition; but, in order that you can make the connection clear, and that you can say he is entitled to claim what Mr. Greenshields called, "the taint in the blood," you must show that the insanity existed on the first of March, show that it existed at that time, and then go back and say, "Oh, here I find it, and I see where it came from." But the mere fact that his grandfather was insane will not make him insane, unless he was, as a fact, insane.

Now, with regard to heredity, what do we find? In the first place we have nothing whatever to do with the collateral lines. It is not their blood that runs in his veins, it is the blood of his grandfather and his grandmother, and of his father and mother. His father and mother are both healthy and strong. On the mother's side, the grandfather and grandmother are quite untainted—no taint of the blood in his mother.

On his father's side, the grandmother was sane, but the grandfather had softening of the brain at sixty-three years of age, or at sixty-two I think, because he died at sixty-three; he had softening of the brain—he had not epilepsy. He had not any of the ordinary diseases that would be transmitted, but he had softening of the brain, a disease peculiar to old age. Insanity is a disease of the body, as Dr. Garner says; one man may die of weakness in the lungs, another of disease of the bowels, another of the head, and another of the heart; but this old gentleman had softening of the brain, a breaking up of the mental organs, at sixty-three years of age. Now, gentlemen, in the first place that does not possess the characteristic of a disease to be transmitted, but even if it did, you

will kindly remember that at the time he was taken with that disease the prisoner's father was thirty-two years old ; so the father's blood could not have been tainted with softening of the brain, that came on only thirty-two years after the birth of the prisoner's father ; and at the time the grandfather was afflicted with softening of the brain, not only was the father 32 years old, but the prisoner himself was four years old. So, where, gentlemen, does the taint in the blood reach and affect the prisoner ? I admit this clearly, that if it could be shown that the prisoner was insane, that he did not know what he was doing, that he did not know he was breaking the law, or know right from wrong, I would say this, "Oh, he is insane, and now we see where the seeds of insanity come from, we can trace the origin of it." But you cannot say this; for although his grandfather had softening of the brain, there is no evidence that the prisoner was insane on the first of March last, or, in plainer words, the evidence is directly against that.

Now, gentlemen, there is another point with regard to the Irish Commission. The prisoner at the bar made a petition, and gave the names of a very large number of witnesses in Ireland, or at least the petition disclosed the names of a large number of witnesses that were to be examined there in support of his plea of insanity. That petition was presented, I think in the month of June, in the early part of the month of June. Dr. Clark, of Kingston, made an examination in June or July, of the prisoner, in the Montreal jail ; he told you he had a brief of the evidence then, a statement of the evidence that they expected to procure in Ireland, and he says that he asked the prisoner with regard to a portion of that evidence. Now, gentlemen, the father and the mother of the prisoner have sworn that they knew of only three of all the pranks that he committed in Ireland. If they knew of only three of all the pranks that he committed in Ireland, where did the information come from that the prisoner's Counsel had here, and that was put in the hands of Dr. Clarke in June, because you will observe that at the time Dr. Clarke examined the

prisoner in the jail, in Montreal, the Irish Commission had not commenced to sit, and the evidence had not been collected either? Where did this information come from, if it did not come from the prisoner himself?

MR. ST. PIERRE, Q.C.—I do not think this is fair. There is no evidence to that effect at all. I do not think it fair coming from my learned friend. If he wishes to know how the information was obtained after the tragedy

MR. D. MACMASTER, Q.C.—It is only a matter of inference.

MR. ST. PIERRE, Q.C.—If my learned friend wishes to know how the information was procured after the tragedy in March, lawyers communicated in Ireland, they communicated with another lawyer at Waterford, and they communicated with detectives there, they communicated with the parents, and they never received any information from the prisoner at all. We never spoke to him at all. My learned friends know we can write to Ireland, it is very easy, and obtain information there, and what was the amount of information which was received by us which led to the Commission, which was obtained through detectives and a lawyer named Mr. McCoy, and how was it obtained? By going from one place to another to all persons that had had communication with the prisoner at the bar; but the prisoner did not ever give us any information; he was not fit or able to do so.

MR. D. MACMASTER, Q.C., continuing:—My learned friend makes a statement of fact which is not evidence. I was putting the circumstances before you, and asking you to draw your own conclusion. Now, my learned friend, Mr. St. Pierre, has undertaken to say on his word that they never got information from the prisoner, and he has undertaken to say that they got information in this way, and that way, and the other way. I will leave it to you to give full weight to his statement—I leave it to you, gentlemen, on the evidence of the prisoner's own father and mother that they only knew of three pranks, whether that information could have been got from any other source than the prisoner at the bar, with the particularity and details that are stated in the evidence.

Whence could this information have been collected, unless he gave the hint from whom to get it? I leave that to your own good sense, gentlemen of the jury. Now, while I am on this point, although it is a little out of order of sequence, I want to call your attention to another thing. Dr. Clarke, of Kingston, stated in his examination in chief, that this man had no memory, that he examined him with regard to several things, and that he could not remember anything about them; but when I cross-examined him, he admitted that of five things he asked the prisoner about, he remembered three—a pretty good proportion—and the other two he did not remember. One of the two he did not remember was about pushing a constable over a wall in a playful manner—a joke on the part of the prisoner—and I may say, gentlemen, that I am not surprised that the prisoner did not remember some of them, because I have very grave doubts as to whether many of them ever occurred.

Now, gentlemen of the jury, the next thing I wish to call your attention to is his education, and his intellectual faculties. You have heard it said here that he went early to a boarding school, that afterwards he went to Brother Dunne's school, that he was about a year in Brother Dunne's school, that he made no progress there, but that, if anything, he went backwards. From Brother Dunne's evidence, I think, gentlemen, you will come to the conclusion that at the time he left his school he was a perfect dunce, and that he practically knew nothing. Well, he went from there to Clongoes, another school. He was only seven months in Clongoes, and then he left there. That is the only school or college he was at after he left Brother Dunne's school; from Clongoes he went to his father's business. Well, gentlemen, if Brother Dunne's statement is correct that he was a dunce, that he could not write without making ever so many mistakes, that he could not calculate, that he practically knew nothing, what an extraordinary lot of information the Jesuit teachers must have given him during the seven months he was at Clongoes, and what an extraordinarily bright clever boy he must have been,

to have picked up in those seven months, all the information he has to-day, as he was not at school after that ! Look at the letters he writes. Look at the way he kept those books in Valleyfield. Look at the order-book, and the number of orders written up by him during the five weeks he was in Mr. Simpson's office. See how he performed responsible duties, signed orders for goods, indexed and filed away letters. Where did he get the education to enable him to do this ? Was it in the two years he was in the cattle business with his father ? His father says not. One of the two conclusions you must draw, either that he was a dunce, as Father Dunne says, or that he was an extraordinarily bright boy ; else, how could he have developed so rapidly in the seven months at Clongoes ? It looks as if the boy had a sound mind, and the Jesuit fathers were good teachers, when such a dunce was turned into such a scholar in seven months.

Now, what was his father's appreciation of his son before he took him into the cattle business with him ? I will read it to you, gentlemen, from Mr. Shortis's deposition :—

Q.—Now, after that, did you have any question with his mother as to what should be done with the boy, whether he should be given a profession or not ?

A.—When he came home after being there (at Clongoes) for the first time, I said to him after being home a few days, I said : “ Val., my boy, when you come home next time tell me what profession or business you want to go to.” He was going to answer me, and I said, “ No, do not answer me, think the matter over, choose whatever profession you want to go to, and I will put you to it ; think the matter over, and if you want to come to my business, come—but please yourself ; whatever business you want to go to I will put you to it.” From the time he was a child he seemed to have a great taste for engineering. If we were cutting in the hay season, and if the machine went wrong, or the cog got broken, of course the men following the machines would not be experienced, but he would go to the machine along with them, and he would be the first to detect what was wrong with it.

Q.—Did you think yourself that engineering was the proper calling for him?

A.—He seemed to have more taste for it than for anything else.

Q.—Was it on account of lack of taste or interest in your business that you thought your son would not make a success of it?

A.—Yes.

Q.—Do you know if he brought a letter of introduction and recommendation from His Grace the Bishop of Waterford?

A.—I heard he did.

Now, gentlemen of the jury, I ask you, in the first place, as sensible men—I do not wish to pay you any vulgar compliment, I will not suppose that you are geniuses, but that you are possessed of a common education like myself—do you think that any father under the sun would talk about putting his son to the profession of engineering if he thought him an imbecile or an idiot? Do you think that any father under the sun would say to his son: “Now, Val., you choose what business or profession you want to go to, and I will put you to it,” if he thought that his son was an idiot? It is inconceivable, gentlemen; and then he tells you that afterwards the boy had made a choice to go into the cattle business, and that he did not succeed in it—he does not say from lack of ability, but for “lack of taste and interest;” that is to say, he did not care for cows, steers, or pigs, and he did not want to give his interest to that business, for he had been led away by his larks and jokes, and the wild life he had been leading. No business can succeed without interest; no man can succeed in any business unless he has a taste for it, and that is the reason the boy did not succeed in the cattle business. Then, gentlemen of the jury, when he could not succeed in the cattle business, what do they do? They send him to this country. They get a letter of introduction from Mr. Nelson, of Liverpool, to people in Montreal, and he is sent to Canada. They get a letter from His Grace the Bishop of Waterford,—a letter of introduction and recommendation,

mark you,—with which he comes to Canada. It is proved that there was a lunatic asylum in Clonmel; it is proved that there is a lunatic asylum in Waterford. If that boy was an imbecile, if he could not tell right from wrong, why is it that he was not put under restraint, and under the protection of the local authorities there, where the parents had the means to see him cared for, and near to their own home? If he was an imbecile and idiot, and could not tell right from wrong, why did the parents turn him out on the cold world of the western continent, alone and friendless? Can you conceive of such inhumanity? Can you conceive that this loving mother and this father, with his fine business capacities, would have sent their son, if an idiot, bereft of his reason, without moral principle, lacking the moral ballast which is the first essential to a man fighting the battle of life, away from his own home, among strangers—there to fight the battle of life? It is inconceivable that any man could do it, but it is doubly inconceivable that a man of Irish parentage, with his warm heart, and his mother with her warm heart—because there are no warmer hearts than Irish hearts—would send their boy, their only child, away from his Irish home to fight the battle on the western continent—an imbecile among strangers, and in a far land, to be buffeted by every adverse wind and circumstance that might overtake him. Is it conceivable, gentlemen? Do you think that boy was an imbecile? Do you think his parents thought him an imbecile? I hope you will do them the justice to believe, notwithstanding the doctors, that they did not quite think their son was an imbecile. If they did, then indeed there came to our shores :—

“There came to the beach a poor exile of Erin”

in a much more disconsolate and friendless state than ever exile left the Green Isle before. If he were an imbecile from his youth, as the doctors say, incapable of knowing right from wrong, lacking the rudder of life—moral principle—how does it happen that Dr. Mackesy, Dr. Connelly, and Dr.

Morris, all of whom are named as witnesses to be examined under the Commission, did not appear before the Commission in Waterford? Do you not think that the medical evidence of the men who lived in the small town of prisoner's birth would be better than the idle speculations of Dr. Bucke? That Commission gives notice to the Crown that Dr. Mackesy and Dr. Morris and Dr. Connelly, all doctors of Waterford in high standing, will be examined before the Commission. Not one of them was called. Dr. Morris had attended the boy some four years before. . . .

MR. GREENSHIELDS, Q.C.—For an accident that happened.

MR. MACMASTER, Q.C.—No matter what it was. It shows he was in contact with the boy. He never attended him for insanity, that is sure. But there was an opportunity for the Doctor to see the boy. And what did Mr. Shortis, the father, say in the witness box? He said that he and his family and Dr. Mackesy and his family are friends, and have been friends for years. If that is so, it is simply crushing that Dr. Mackesy was not called to prove that this boy was an idiot and imbecile, if he were an idiot and imbecile, and why was he not called? Oh, gentlemen of the jury, the defence reproached the Crown for not calling experts, when the Crown felt that they did not need experts, when they found that the defence's experts pulverized themselves. I now ask them, in retort, "Why, if this boy was an imbecile and idiot in Ireland, did you not put the doctors of the town in the box, and give us the benefit of their medical opinion?" We have it not, and why? And again, gentlemen, what do you say to His Grace the Bishop of Waterford, the Roman Catholic Bishop, giving a letter of introduction and recommendation to this young man coming to this country? Do you imagine that a high dignitary in the Roman Catholic Church, a Church whose dignitaries have such a knowledge of the world and its affairs, who are not merely strict in morals as ecclesiastics, but are politicians in their shrewdness, do you imagine that a high dignitary in the Roman Catholic Church such as His Grace the Bishop of Waterford, would have given a letter of

introduction and recommendation to Valentine Shortis to bring to this country, if he were an imbecile and a fool? No, gentlemen, do you not think that in such case the good Bishop would have said to his father and mother :— “ This boy is not able to go from home, he needs his father’s and his mother’s care. If you do not wish to place him in an asylum, get some one to guard him ; but in Heaven’s name do not allow him to go about with pistols, do not allow him to go about with guns, stop his waywardness ; the way of the transgressor is hard, and he will come to a sore end. Send him not away among the stranger, because you may never have even the consolation of the father who welcomed back his prodigal son.”

Yes, we know what the good Bishop would have said. No ! gentlemen, you cannot, on the facts, come to the conclusion that this boy was an imbecile, if one hundred thousand doctors said it by way of speculation. All the circumstances, parental affection, education, religious influences, point to the fact that the boy was not lacking in intellectual ability, though he was a bad boy, and of criminal instincts. They sent him away because he was wild, as Mr. Nelson’s letter expressed it, expecting that he would get that taken out of him in the new world.

Now, I will quit the Irish Commission, and I leave it to you to say in the depths of your hearts whether this boy could have been put down as an imbecile when he left Ireland, and whether he could have been put down as anything else than a spoilt and wayward boy, uncontrolled from boyhood upward—a reckless libertine—regardless of life ; in a word, a criminal, and a criminal all the same although he had not been punished in Ireland. You can easily forecast the result, for

“ Headlong liberty is lashed with woe.”

Now, gentlemen, I will next take the evidence that has been given for the prisoner in Canada. First, there is the evidence of the two Mulcaheys. The husband came forward

and said prisoner was a very "genteel young man," and that he knew nothing against him. Then Mrs. Mulcahey came forward and said she knew two things about him: he tried to explode a lamp, and he put cartridges upon a hot stove. Well, gentlemen, the lamp story completely exploded itself, because, instead of exploding the lamp, the poor boy was trying to blow it out, and instead of the cartridges being put upon the hot part of the stove, they were put on the back part. But I leave it to you whether you believe that the cartridges were ever put on the stove at all, because Mr. Mulcahey was examined a week before his wife; and, if those cartridges were put on the stove, or if cartridges were all around the kitchen, do not you think that Mrs. Mulcahey would have reported that to her husband, and that when he came here to give his evidence he would have said when he spoke about the boy that he did not know anything against him, if he knew that he had placed cartridges on the stove? How are you going to explain the difference between the husband and wife? How are you to explain the presence of the "two strange gentlemen" whose names she did not know, at her house, the night before she gave her evidence here, a week after her husband had testified?

Now, gentlemen of the jury, the next evidence is that of Mr. Bury. Mr. Bury said the prisoner was an eccentric young man, that he did unmannerly things, that he spat upon people in the street. That was very rude and wrong, and he deserved to get his ears well cuffed for such misconduct. But it does not prove a man crazy. Then, Mr. Bury says in addition that he was a very nice young man, he was a well educated young man, he was a gentlemanly young fellow, and he came to our house and dined at our house, and met other people there, and he went out as young gentlemen generally in Montreal do, and the Irish evidence says that this young man had very nice young friends for companions in Ireland, gentlemen's sons, and Mr. Bury tells the same thing happened in Montreal. So you have got to take it on the evidence of Mr. Bury and of the Irish witnesses, that he had

a fair amount of education, and was a nice gentlemanly fellow. He showed some eccentricity in wearing Indian moccasins, and a belt around his waist. These were new to a young man from the old country, and he showed a criminal instinct when he wanted to smuggle diamonds across the line in a tire of a bicycle, a pretty "cute dodge," to say the least. I have myself defended, and my learned friend has too, a great many cases of the Customs where crime was alleged; but I will confess, and I think perhaps my learned friend will agree with me, that I never heard a more ingenious proposal in my life than to smuggle diamonds, which are highly dutiable, into the United States, concealed in the tire of a bicycle. It shows keenness of intellect, and it also shows the criminal instinct of the prisoner.

The next is the evidence of Mr. Roe; and you will remember that when this young man first came to the country, he went to the Windsor Hotel, and, almost immediately after, to the Cadillac Hotel. He was only a short time in the country—he was just out from the old country. He thought our ways here strange, and I have no doubt the Cadillac Hotel people thought his ways strange. Our ways are different from the ways of the people in the old country—we all know that. Now, it is quite probable that he saw that the people were amused by his ways, and, seeing that, he took means to amuse them. Mrs. Lewis, whom we saw in the box, is a somewhat eccentric lady herself, and she gave us a representation that might be the presentation of a *prima donna* on the stage, in reference to his acts, a somewhat light demonstration, notwithstanding that she was at the time wearing her widow's cap of not over six months' standing. She told us a few things about him, how he ate his ice cream out of order, how he bowed to her profoundly when he met her in the hall, how he was so gallant to the ladies in the drawing-room, and how he even assisted one of them to the piano by putting his hands to her waist. I suppose this young man saw that this somewhat interested Mrs. Lewis (I mean nothing to her disparagement) and that he probably indulged her and her

friends. As to commencing at the bottom of the bill of fare, and going to the top, there is nothing in that. He may have liked ice cream. Ice cream is a rare dish in the old country, and so is corn—particularly corn on the cob—and I am not surprised that, coming fresh from the old country, he was greatly delighted with the ice cream, and I am not surprised that he criticized the custom of eating corn on the cob, because they do not eat corn on the cob in the old country. All these little eccentricities amount to nothing. We have all done foolish things in our lives. We have done things that we would not like to have raked up: we have committed our own pranks, and perhaps if one of us got into trouble to-day, and if these things could avail us as an excuse, we would be astonished at the amount of information that our friends, and particularly friends of our youth, could tell about us. But I trust that will not occur, for two reasons—first, because I hope we will not get into trouble, and secondly, because I hope that these pranks may not come up against us.

Now we have Mr. Roe, and what does Mr. Roe's complaint amount to? Why, he remarks the way he walked into the dining room, and that he took fruit in with him. I suppose this last was a great offence to that hotel-keeper, because it implied that the prisoner was not satisfied with the fruit he got there, and he says he saw him throwing pea-nuts out of the door, and one of them nearly hit a "nigger." This is serious. Well now, gentlemen, if this kind of evidence is going to show that a man is crazy, it is becoming extremely ridiculous.

In regard to his table manners, and general manners, have you not it abundantly established that these were good? If anything else occurred, it was the exception; or he would not be dining at Mr. Bury's house, and he would not have been dining at Mr. McShane's house, and he would not have been dining at numerous other places in Montreal, unless he displayed good table manners. And if he did play the eccentric in regard to pea-nuts, ice cream, and corn, or was over polite

in the drawing room, depend upon it, it was for a joke, and he was fond of jokes.

The next we come to is the evidence of Malabar—that extraordinary evidence of Malabar, the night-watchman from the Queen's Hotel. I will not say anything more with regard to that than this, that there was a recklessness about that evidence that was hardly compatible with a true statement of fact. Now, this young man, the prisoner, was two or three days in February last at this hotel; he was about three weeks visiting his mother in June or July preceding, and that was all; and yet Malabar comes up and tells you that he was two or three months boarding at the hotel. That is one instance. Then he tells you this extraordinary story about turning down the light, and about the scene with the pistol, about his falling down stairs, about his jumping about the hotel, about his acting like a lunatic, and yet this man was only on duty at night. And what have you got? You have the manager of the hotel, Mr. Matthews, you have the chief clerk at that time, Mr. Fraser-Crierie, now the manager, and you have the man in the washroom where it was said some of the things were done, and they all come before you and say, each for himself, "I have never heard anything of the kind: I never saw anything of the kind: no report was made, and if anything of the kind had been done, it should have been reported." Now, which are you going to believe? Are you going to take Malabar's evidence against that of those three other people? You will also remember that during the three days prisoner was in the hotel, Mr. Kendrick, a farmer from Sherbrooke was there, and he states that the young man behaved himself as a gentleman, that he saw him there with ladies, and talked with him, and that he took an interest in music. Are you going to believe Malabar, who comes up with a history we know nothing about, or are you going to believe this testimony of the four witnesses with regard to what occurred at the Queen's Hotel? Now, there is another man; there is this Mr. Mackay who comes and tells an extraordinary story about Shortis flour-

ishing a pistol at 9 o'clock in the evening on that great thoroughfare of St. James Street, and at the door of the Queen's Hotel, and about his taking the pistol from him, and coming in and giving it to Malabar. Now, gentlemen, if that is not a story made out of whole cloth, there is nothing that I ever heard of, or read of, which looks more like it. In the first place, at 8 or 9 o'clock in the evening there was a crowd passing there, nobody spoke. It is proved there were people passing each way, yet nobody stopped, nobody spoke. Do you think it possible that a scuffle could have been going on in the street for the possession of a pistol, and nobody would have remarked it? Mackay went home, and never mentioned it to any one except Malabar. Then, Malabar has a different story from Mackay himself with regard to the pistol. Malabar says he did not see the scuffle himself, but he says that Mackay told him his story about it; and when Mackay comes to tell the story here, it is a different one altogether from that told by Malabar. It is a little thing, but it looks exceedingly like something manufactured out of whole cloth. But if it did occur, what does it show? A man may carry a pistol without being a fool. I have carried pistols, and I am sure my learned friend, Mr. St. Pierre, has done it; I have heard it said here that it was remarked that a man is a fool for having fire-arms in his room. I have, for years of my life (not lately) slept with fire-arms in my room, and good reason for it too. A man is not put down as a fool for these things, but a man is put down as a reckless coward who goes about in a civilised community with a revolver in his pocket. There may be times and circumstances when a revolver is a good friend, even if you do not intend to use it; but even if the prisoner did the things that Malabar says he did, what do they point to? They point to the criminal—again, the criminal.

Then we have the evidence of Captain Matthews. That is not important. And the evidence of Miron and Sauvé with regard to what took place after the killing that night, the evidence of Cunningham and Mr. Dunne, which I have already referred to, the evidence of Leon Leduc and

Walter Cooke. Now, Walter Cooke is the young man that took down the letter from Shortis's dictation on the morning after the murder. You will remember, gentlemen, that Walter Cooke took down this letter under circumstances of great excitement, just after the arrest of the murderer. It is not Shortis's writing. It is taken from his dictation. He was under arrest at the time, and my learned friend, Mr. Greenshields, endeavored to make quite a point out of these first words, "Telephone home, anticere," or something like that, in the letter to Miss Anderson. He said these words were inexplicable. They may be explainable, but we do not know the explanation. This young man Shortis came from Miss Anderson's house just before the murder, and she is the first person he writes to when he is arrested., "Telephone home." We do not know what that refers to. There may have been an understanding about that ; there is no explanation about "anticere." What is that? Is it a cable word? Is it the name of some person? Is it an assumed name of some person, or is it a pet name, or what is it? We do not know. Or is it a mistake in taking it down, seeing that it was taken from dictation under circumstances of excitement. But we do not know. If we had it written in his own hand we might know more about it, but what comes after it? "Do not fret. If Bob gives any dirty talk you tell him to mind his own business, or I will make it bad for him. Send Jack to me immediately. I remain, yours lovingly, B. Shortis." There is no ambiguity about these words, gentlemen. And then here is the answer, acknowledged by Miss Anderson in the box :—

"My dear Bertie. Keep up heart. All will come right soon. I will always be true. Your own Millie."

Now, gentlemen of the jury, what is the meaning of all this? You know when a great crime is to be committed, the criminal tries to cover up his tracks. But there are some tracks left, or innocence and justice would never be able to assert themselves. Crime has not that intellectuality that will permit the criminal to wipe out all the traces of his

iniquity. There are some tracks left. Do you remember that this young man, it is so sworn, spent the evening before at Anderson's house, that he was with Jack and Miss Anderson, that he was with this young Jack Anderson at the same house, the night that he proposed, or a very short time before, to kill Mr. Simpson? Do you remember, that it is proved by Mr. McGinnis that at that very house to which that letter was sent, and from which the reply came, a conspiracy to murder was hatched? Do you remember it was proved that as Mr. McGinnis came in one night, Jack Anderson and Shortis were in the drawing room together, and young Jack went out into the hall and asked Bob McGinnis to come into the drawing room, and took him in, and Shortis made a proposal about thrashing Simpson, and supplemented it by saying he would "fill him full of lead?" There you have McGinnis, Jack Anderson, and Shortis together in the parlor of Anderson's house, or of McGinnis's house, with a proposal from the prisoner to take the life of a human being, upon the condition that McGinnis would become a perjurer, and prove an *alibi*, that is, prove that the prisoner was somewhere else at the time he filled Mr. Simpson with lead. Now, when you look at this letter that was sent by the prisoner to Miss Anderson, and at her reply, you must consider this, the Andersons had the knowledge in that family, that a few weeks before, this young man had proposed to take Simpson's life. Mr. McGinnis told it to his wife. He swears to it. Young Anderson was present, and Shortis was also present, and is it possible that Miss Anderson did not know that this man proposed to commit this criminal act? She had a revolver in her room herself, by the testimony of her step-father. Is it possible that Miss Anderson, when she spent the evening of the first of March with that young man, was ignorant that a few weeks before he had proposed to take the life of Simpson? And yet, with that knowledge, she receives his visits night after night in her own home, up to the very night of the tragedy. Is it possible that she could have been dissociated from him in regard to this act, or have no

knowledge of it? Now, let us look at it for a moment. He leaves her house. To Miss Anderson he says he has a headache; he is going home to write to his mother. He does not go. He goes over to the mill. I will not refer to it now, but the first person the next morning he writes to is this young lady, to "tell Bob to mind his own business, or I will make it bad for him." What business? What but the business that he himself proposed to Bob before, to take Simpson's life, because he realized that if that came out, it would put him in a bad position with regard to this murder?

MR. ST. PIERRE, Q.C.—It had come out already.

MR. MACMASTER, Q.C.—Not before the public. Now, gentlemen, we have the young lady's reply with that knowledge. Let us grant it was out that he proposed to murder Simpson. "I will always be true. Your own Millie." No surprise about anything, no enquiry. Nothing to suggest surprise. We can imagine an innocent girl saying: "How in the world did this happen, my dear Bertie? I will never believe you guilty. I hear you killed two men. I will never believe it. I am your own true, so and so," whatever it may be, "but I will not believe this crime." No! Miss Anderson did not need any explanation of that kind. "All will come right soon. I will always be true. Your own Millie." Now, gentlemen, when we come to consider the evidence of young Jack Anderson and of Miss Anderson, we must remember that they stand close to the prisoner; Jack Anderson was a co-conspirator with him before the law, on the proposal to take Simpson's life, and Jack Anderson and the prisoner are open to an indictment for a conspiracy to murder on that proposition. What weight are you going to give that young man's evidence in this case? What weight can you give to the evidence of a young woman who was ready to say "I will always be true," and "I am your own Millie," after she knew that he proposed to kill Simpson, and after she had the news brought to her that he had killed two men?

Now, gentlemen, there is more than that. She says that he pointed a pistol at her—"in fun," it turns out. There is no

proof that a pistol was ever pointed by him at anyone else in Valleyfield except her, saving on the night of this tragedy. She says, he had those bad headaches. There is no proof given by anybody else in Valleyfield of these. Do you believe, or does any sane man believe, that if he had had these neuralgic headaches in Valleyfield, they could not have been easily proven? Do you not think, that if he had had these neuralgic headaches in Valleyfield, Dr. Sutherland, who was his medical adviser, and who prescribed for some other complaints, would have known something about them? Or, are these headaches a mere invention, like the hallucinations and delusions? And yet this young woman swore, that he had this terrible headache, and her brother, with parrot-like fidelity, confirmed the story; and yet, although it was only a step,—less than a five minute walk,—from the Anderson's house across to the mill, where he went, there was not a word about headache in the hour he spent there before the tragedy, but on the contrary he went ahead eating an apple, a very bad thing for a headache, and he never complained about a headache to any of his associates. This headache, therefore, I suggest to you, is also manufactured out of the whole cloth.

Now, Mr. MacVicar came up in the early stages of this case, and swore that some time at the end of January, or beginning of February, the prisoner at the bar said to him, that it would be an easy matter to rob the office of the mill, and that he had suggested that to him on two occasions. Mr. MacVicar did not take it kindly. How do you know, gentlemen, that the prisoner at the bar had not an accomplice? How do you know that he did not suggest the scheme to somebody else, who would take the bait a little more readily than MacVicar? How do you know that he wanted an accomplice very badly? How do you know that he had not some place arranged in which to put the money, or if he did not have accomplices on the spot, that he had not them where he could find them, and where the money could be hid, and that he had not people who were ready to swear to an alibi, whose conscience would be "sufficiently

elastic," as he expressed it, to swear an alibi? But, gentlemen, when Miss Anderson came into the box, she swore that this young man heard noises and voices, and thought he saw faces at the windows. By the proof, he never saw these at any other place except the Anderson house—not one word of proof that he saw these at the hotel, or at any place where he ever lived—all at the Anderson house. Are you going to believe that story from these people? And I tell you more, gentlemen, we proved by young MacVicar here that he had been several times in that house between the first of January and the first of March. He had gone there with Shortis in the evening, and out again with him, I think at least twice a week during that period, and he says that in all that time the prisoner at the bar never spoke about hearing voices, or hearing sounds, or seeing faces—never heard voices and sounds when there was anybody there except Miss Anderson or young Jack Anderson. Now, did MacVicar tell the truth when he made that statement? You will remember that Miss Anderson went into that box and swore to you solemnly that MacVicar had not been in that house since the 1st of January last; MacVicar was called here, and said, "I was in the house since the 1st of January. I was there about once or twice a week, from the first of January to the first of March. I remember a particular occasion especially when I was there, it was the night of a carnival, and I was there about the carnival affairs; and when I was there Shortis came to the door with Miss Anderson and Miss Asselin from Montreal, and I saw them there at the house," giving day and date, as an instance. Why does Miss Anderson undertake to swear that MacVicar was not in that house from the 1st of January to the 1st of March? Simply because these manufactured hallucinations were put in in that period, and she wanted to exclude anybody from having been at the house, and to show that she was the only person who heard them; and if MacVicar did not speak truthfully before you, how is it that Mrs. McGinnis, the mother of this young lady, who must feel more for her daughter than anybody else,

and how is it that Jack Anderson, the brother, never came forward to contradict MacVicar and say that he is mistaken, that he was not there from the 1st of January, and how is it that Miss Asselin was not called by the defence to contradict MacVicar? Not one of these was put in the box, and MacVicar's word stands true, and Miss Anderson's word stands false; and if it stands false there, why does it not stand false in other particulars, which are so inherently improbable as not to be worth credit for a moment?

Now, gentlemen of the jury, it has been stated that McGinnis was the enemy of Shortis. What proof is there at all of that? You remember that the defence applied for a Commission to examine him. Did they want to examine his enemy? They dropped it. Then it came out that an extraordinary statement had been made by McGinnis to Simpson, and in order to probe that statement, the Crown asked for a Commission to examine McGinnis. We asked it about ten or eleven o'clock in the day, before this Court; and as quick as lightning Mrs. McGinnis, the mother of Miss Anderson, appears on the scene, is in consultation with the counsel for the defence (I got their admission to that effect), and although the Commission went to Huntingdon that very night, and by the first train, and by driving across the country to catch the train, Mrs. McGinnis was on the train and got to her husband an hour before the Commissioner arrived. *Presto*, change, gentlemen of the jury. What is the meaning of this? Do not you see that the whole ring was one, and united in respect to this matter. McGinnis in the main was honest. He could not deny the fact of the proposal to shoot and kill. That had got out. He had already stated that to Simpson; that had to stand. But he had to interlard it with some remarks as to whether this man was in his right mind or not. However, he did state that the prisoner was quite capable of distinguishing right from wrong. Now, there is just one more thing with regard to Miss Anderson's evidence. Can any reasonable man doubt that this young woman was engaged to the prisoner? Her letters show it. His letter

to her shows deep affection, "Yours lovingly," and her letter to him shows the extreme of affection, "I will always be true. Your own Millie." It is impossible, gentlemen, for any girl of self-respect to have written that letter unless she was engaged to the prisoner, and felt she was actually his; and that being so, gentlemen, you must take her evidence with that bias by which it is affected, and you must, in taking her story, consider how far she is not merely making the case out for the prisoner, but how far she may be making out a case for herself. Now, this is the evidence, gentlemen, that is submitted on behalf of the defence, with the depositions, of course, of the father and the mother of the accused, but I do not again intend to refer to the depositions of the father and mother; I had occasion to refer to the father's appreciation of his son's talents, and may later have to make a necessary reference to Mrs. Shortis's deposition, but I will offer no comment on the evidence of the father and mother whatever. You will remember I asked the father but very few questions, and I declined to cross-examine the mother. It is a painful situation for them. There is no father or mother but will almost go to any length, even as the mother said, to the length of her life, for their son, and there is no doubt that the best view was put forward in their evidence towards sustaining the plea of insanity; but even taking it as it is, I submit, gentlemen, that it is far from sustaining that.

Now, gentlemen, that is the evidence put in for the defence. It is the Irish Commission, and it is this trifling amount of evidence that has been put in in Canada, and I ask you as sensible men, does that show insanity on the part of the prisoner? Does that show he was so insane that he did not know what he was doing? Upon the top of that they put the evidence of the four doctors, and I must now refer you to the doctors' evidence. In the first place, gentlemen, you remember with regard to the doctors, that, as Lord Campbell said, they are experts, and extremely little weight is to be given to their opinions; they come so biased on the side that they are called for, that they become practically partisans,

and you could see it yourselves when some of these doctors were in the box here. I was not so much astonished to see it in Dr. Anglin, for he is a young man, and perhaps over zealous in commencing life as an expert. He has probably been taught a lesson that it is dangerous to play the lawyer in the witness box. He has a good education and good abilities, and it would be much better to answer directly to the questions put, and have an end to the matter. But I was a good deal astonished at a man like Dr. Bucke trying to play the partisan to such an extent. Why, you remember, gentlemen, he went ahead like an oracle, telling you all about this case, as if you did not know anything about it ; he was all " I find, I find, I find " in his examination-in-chief, and he was nothng but " But, but, but " in his cross-examination. You will remember the appearance that he made ; you saw for yourselves the truth of what Lord Campbell says, that these men become partisans, and that hardly any weight can be given to their evidence. You will remember, too, the passages I read to His Lordship this morning, the deliverance of Lord Chief Justice Denman in the case of the Queen vs. Oxford (4 Wallis, State Trials. New Series, page 582), that in some cases the opinions of medical men might be valuable, as for instance, in poisoning cases, where it is necessary to search for the deposits or effects of the poison in the body ; but in other cases, such as a shooting case like this, he says a man of the world, of common sense, and of experience, is just as well entitled to an opinion as a doctor is, and especially does he say that with regard to moral insanity. So that, gentlemen, when these doctors try to teach you that two and two make five, and that three and three make seven, you can have your own opinion about it ; you can judge of the affairs of the world as well as they can. I asked Dr. Anglin in that box if it was not as feasible for a gentleman like His Honor, or a juryman, to judge of a man that he met from day to day in the ordinary transactions of life and say if he was a fool or not, and could not he see if he knew the difference between right and wrong as well as a doctor could, and

he said "No, he could not." Well, now, gentlemen, that is a little bit of conceit on the part of the doctors, or rather of some of them. All the doctors do not think that, but there is a certain class of doctors that have been brought so much in contact with the insane that actually they become more or less insane themselves, so that it has passed into a proverb now that these doctors have been so tinged with insanity, that if you even mention insanity, they are ready to pick it out of everybody that comes in their way. These men are now universally called, "mad doctors"—or extremists. Now, you are not bound to take their opinions, you are not bound to take them, on the high authority of Lord Campbell, of Mr. Taylor, and Lord Chief Justice Denman, one of the greatest Judges that ever sat on the English bench, whose opinion I handed up to His Lordship this morning. I tell you, gentlemen, if you are overwhelmed with any idea that doctors have a right to come to you and dictate to you what you are to think as to whether a man knows the difference between right and wrong, they have no right whatever to do so. They simply come on your territory—that is your function. Perhaps you may be aided by their opinions; if so, good and well, but I ask you, in all candour, have you got one particle of information from these doctors, that would help you to come to a correct conclusion, as to whether this man knew the difference between right and wrong?

There is nothing so unsatisfactory as expert medical testimony. Let me review it very rapidly. In the first place, gentlemen, you know that Dr. Clarke, of Kingston, said that this man was a moral imbecile, and he described what a moral imbecile is. Dr. Bucke came into the box and said the same thing, that a moral imbecile had no morals, and he could not distinguish with regard to morals, and he put the prisoner down as a moral imbecile. But what did I do? I picked up the lecture that he had delivered at McGill College in Montreal, and I showed him where he had put down a man of the same description, and with the same

characteristics as he ascribed to the prisoner, as a criminal, and I read this passage from his own lecture " :—

"A criminal (speaking broadly and roughly), is simply a person who was born with a defective moral nature, just as an idiot or imbecile is a person who is born with a defective intellectual nature, just as a person who is colour blind, is an individual who was born without colour sense." Now, there, gentlemen, we have the definition from Dr. Bucke, of what a criminal is, and we have also a definition of what an imbecile is, and according to him, an imbecile is a man with a defective intellectual nature, and, according to him and his book, a criminal is a man who has a defective moral nature, so that according to his book, gentlemen, the prisoner at the Bar, with his characteristics, being defective in moral nature, which is the ground on which they put him down as a moral imbecile, is a criminal, according to Dr. Bucke himself. And not only that, gentlemen, he tried to make out that this was a popular lecture, and said, he would amend that next time. Afterwards he took back the amendment that he made. Gentlemen, when a doctor comes down from London and delivers a lecture, an inaugural address before the learned men of McGill College in Montreal, and says that a man lacking in the moral sense is a criminal, not an imbecile, how can he come into this Court and say he is an imbecile? Not only that, but he makes the other distinction, and says that an imbecile is a man that is lacking in intellectual sense. Well, gentlemen, in order that I may show you that he was not depending just on his off hand, carefully prepared, lecture, I called his attention to a book that he has written entitled "Man's Moral Nature," and I drew his notice to this sentence in that book :—*If it is the moral nature which is deficient in development, we would say the man is a criminal, if not in act, at least by nature.*" According to Dr. Bucke's own book, the prisoner at the Bar being deficient in moral nature, is a criminal, if not in act, at least by nature, and that rules him out of the imbecile class, because he told us the

imbecile was a man deficient in intellectual nature. So much for Dr. Clarke, of Kingston, and Dr. Bucke, of London.

Now, what was the next stage? Dr. Anglin told us that the prisoner was an imbecile. I read a definition to him of an imbecile—I read a definition out of a book, you all heard that definition read, and I asked him if it was correct.

“The idiot has not even the animal intelligence; the imbecile is a step higher in the plane of instinct and knowing, but is *little, if any, higher than the dog, elephant and chimpanzee, and is held not to be accountable because of mental deprivations.*” I asked him if the prisoner at the bar would come within that definition of an imbecile, and he said, “No.” Well, then, gentlemen, if he does not come within that description, he is not an imbecile according to that definition, and my learned friend, Mr. Greenshields, interrupted me and said, “That is the doctrine of the wild beast, and that idea was exploded one hundred years ago.” I had to retort by telling him it was not, but that it was the written authentic opinion of Dr. Clark, of Toronto, one of the experts for the defence in this case, an opinion expressed as recently as 1891, in his published writings. According to that definition of Dr. Clark, of Toronto, the prisoner at the bar is not an imbecile unless you put him down with the dog, elephant, and chimpanzee. Can you do it? If you cannot class him with the dog, elephant, and chimpanzee, he is not an imbecile, and Dr. Clark’s own book rules the prisoner out of the imbecile class, just as Dr. Bucke’s book rules him into the criminal class. But there is more than this, gentlemen, Dr. Clark, of Toronto, and Dr. Clarke, of Kingston, are in conflict with Dr. Bucke in another and most important respect. Dr. Bucke says there are two natures in man, there is an intellectual nature and a moral nature, and the moral nature may exist perfectly independent of the intellectual nature; one may exist without the other. One may develop by itself. Dr. Clark, of Toronto, and Dr. Clarke, of Kingston, both say that they cannot exist independently, that the moral nature is founded on the intellectual nature, and if the intellectual

nature collapses, the moral nature goes with it ; and I think they are right. But, gentlemen, when I confronted Dr. Bucke with that, he said, "I know I am contrary to another doctor in this matter," and here with regard to the very matter in controversy in this case, as to this distinction between the two natures, and the co-existence of them, and how much one is affected by the decline or absence of the other, here we have the very doctors in the case at war with one another. Well, now, gentlemen, that is not the only difference between these doctors. You know the story that was brought out here for the first time, that the first shot was an accident. It was very peculiar how it was brought out. Dr. Anglin was examined and cross-examined the whole of one day. We heard his story. He told us that the prisoner did not remember anything at all about the tragedy, the first day he was examined. You remember that, gentlemen. Now, here are his words:—"Moreover, he remembered nothing whatever about the tragedy on that night, and I asked him if it seemed like a dream, and the reply was, 'it was like nothing, all I remember was cleaning a lamp chimney.'" That is the story he gave the first day, not one word about an accident, not one word about him remembering anything, "only cleaning a lamp chimney." Now on the following day—the first day was a pretty hard day's examination, and the doctor was in a number of pretty tight places—on the next day he appeared in Court and I further cross-examined him as to whether he had a consultation with the other doctors since he left the box on the preceding day ; he did not admit that they had very much consultation together, but he appeared in Court with a brand-new and revised version of his former statement.

First version :—

Q.—Now, is there anything in the crime itself which suggests the insane nature to your mind?

A.—There are several points about it.

Q.—Well, now, would you just state them, Doctor?

A.—Well, one strong point is that the men who were killed

by the prisoner were not his enemies, or indifferent to him, but, it has been emphasized, his best friends.

Q.—Anything else?

A.—In the second place he had no accomplices; in the third place there was neither premeditation nor motive to prove it; there was no attempt at flight after the deed had been done, and then his conduct in going to sleep, or at least as good as sleep, in the cell with the blood of his victims on him. Moreover, he remembers nothing whatever about the tragedy of that night; I asked him if it seemed like a dream and the reply was, "It was like nothing, all I remember I was cleaning a lamp chimney."

Second version:—Witness was asked what connection he found between the crime and the delusion, and says:—

WITNESS.—You are asking whether there is any connection between the crime and the disease?

MR. MACMASTER, Q.C.—It is for you to answer, not to argue.

WITNESS.—I say there might be a reason for it, which no sane man would give, and there is this much proof that the first shot he fired was an accident. In his imbecile way of pointing pistols, as he often did, he pointed it at the lad, and it went off by accident, and after that the thought came over him, "Now I am in the hands of Simpson," and then the impulse to shoot the victims; after that he remembers nothing, it is a blank. He says he was cleaning a lamp chimney, so that to my mind there may be a connection.

Q.—Shortis said that to you?

A.—Yes.

Q.—Where?

A.—In the Montreal jail, last August.

Q.—Last August?

A.—Yes.

There was not one word of proof that the first shot was an accident, and there is not one word of proof now; the accident theory is simply a magnificent afterthought resorted to in desperate circumstances.

Now, you see that Dr. Anglin, though he said the first day that he had asked the prisoner about the tragedy, and that he told him he did not remember anything at all about it, admits on the second day and almost volunteers it, that the pistol went off by accident, and that when it went off by accident he thought he was in the hands of Mr. Simpson, and after that he does not remember anything about it, that it was a blank, and he says he was told this last August by the prisoner. Well, gentlemen, all I will say is this, with regard to that, if he was told that last August, and if he was in contact, as he was, with the prisoner's Counsel here for fully two weeks before he was examined in the case, it seems a most extraordinary thing to me that he should have gone through his examination-in-chief the first day and that he should have gone to the end of my cross-examination the first day, and that he never mentioned these circumstances until the second day. It is an extraordinary thing that he professed to give a full report of the prisoner's statement to him in regard to the tragedy, and should have taken the pains to tell you that the prisoner remembered nothing except cleaning a lamp chimney, when in truth and in fact, according to his statement on the second day, he had it in his mind and memory that the prisoner had told him in August last the first shot was an accident, and that then he thought he was in the power of Simpson, and then he remembered nothing. It may have been forgetfulness ; it has a suspicious look. It is at least unfortunate that it has not the look of candour that Dr. Anglin did not mention it on the first day, when he professed to give the prisoner's full statement with regard to the tragedy.

Even with regard to the tragedy itself, the doctors are at variance with each other. Dr. Anglin says it arose from impulse. Dr. Clark, of Toronto, says it was impulse. Dr. Clarke, of Kingston, says it was impulse. Dr. Bucke, of London, says it was a lapse of consciousness.

MR. GREENSHIELDS, Q.C.—That is the same thing.

MR. MACMASTER, Q.C.—My learned friend says it is the

same thing. I say it is nothing of the kind ; for lapse of consciousness means a complete severance from consciousness, while impulse would drive a man on to do it, whether he was conscious or not. And not only that, but Dr. Clarke, of Kingston, has told us that he and Dr. Metcalfe were attacked by a man who stabbed and killed Dr. Metcalfe, and in cross-examination I asked him, "Do you think he was conscious of doing it?" and he says "Yes, I do." Now Dr. Bucke's lapse of consciousness means a complete state of not knowing. Dr. Clark, of Toronto, has a different idea ; his idea is quite different, whereas Dr. Clarke, of Kingston, puts it down as an uncontrollable passion, in which intelligence plays no part at all. Dr. Clarke, of Toronto, says there is a double consciousness, mark you ; so among the three doctors, you have one with a double consciousness, one with no consciousness at all, and another with nothing but impulse. And now, gentlemen, how much information do you collect from all these with regard to whether a murder has been committed under compulsion or not ? To test the absurdity of these theories, I put this practical question to Dr. Clarke, of Kingston : "If you see two men standing there, and held at bay by a man armed with a loaded revolver, who says to these two men, 'Stand there, don't move, or I will shoot you,' and he turns around and shoots another man, is that murder in the ordinary affairs of life?" And he says "Yes, that is murder." That is Dr. Clarke, of Kingston. Are you going to allow these vagaries of the medical men, differing one from another upon a thing that is unknown and unknowable, to influence your judgment on a matter of common sense? Are you going to put aside common sense and accept their speculations—their vague and unsettled theories? Reject them, gentlemen of the jury—it is a matter of common sense. Common sense is the arbiter, their opinions are mere conflicting speculations, and conflicting opinions should play no part whatever in deciding what is reasonable by the rules of common sense.

Now, gentlemen, another thing I asked Dr. Clarke, of

Toronto, "Do you consider that a headache plays any part in connection with insanity?" "Oh, yes," he says, "a most important part." Then I turned to his lecture delivered before a public association, and I took his own book and put it in his hands, and showed him where he said twice that headache has nothing whatever to do with insanity, and then he goes off and says it is "neuralgia." Flies away to neuralgia, to some other will o' the wisp, of which we have no evidence whatever. Then, gentlemen, they come before you, and like oracles tell you that this is so, and that this man felt so and so at this time or that time, and when Dr. Clark, of Toronto, is driven to bay, as to whether he could tell what was passing in another man's mind, he said, "No. No one but the Almighty could tell that"; and no one but the Almighty could tell what was passing in that young man's heart, and there is no rule on earth by which his actions can be judged, except by the actions themselves, and his words in respect of them.

Dr. Clark, of Toronto, is a very able man. After delivering his opinions in the box with regard to insanity, he was cross-examined by me with regard to a particular kind of insanity called "*folie circulaire*," or intermittent insanity, which is the insanity which comes in a very aggravated form for, say, six weeks, followed by a lucid interval for, say, six weeks, and then a period of excitation for another six weeks, and so on, so that it is a sort of circulating insanity. I found that Dr. Clark had delivered a lecture in Washington upon circular insanity before a great convention, and that there were present a representation of the leading Doctors of the United States, England, and Europe, and that this lecture was criticised by those present, and I asked him to show me from the official report if one doctor in all that great assembly accepted his ideas with regard to animal magnetism being a potent force in respect of circular insanity; because that was the idea he started. He wriggled on the question for a while, but ultimately had to say that the doctors put down his idea as "a stumbling-block," that although one of the doctors—

Dr. Blandford—admitted there were some good things in the lecture, another leading man—Dr. Savage of London—said, “I cannot accept Dr. Clark’s idea in respect of circular insanity,” and that every man who expressed an opinion as given in the book, expressed a contrary opinion to his, and that the only person who agreed with him was a doctor from Brussels who delivered a speech in the French language, which was not reported. I gave him full credit for the fact that there may have been such a speech delivered, which was in his favour, but which, however, was not reported. But there remains the fact that on such a fundamental matter as circular insanity we find this doctor, this great oracle, in conflict with the leading men of the profession. Gentlemen, what weight are you to attach to the opinion of these men? Well now, that is not all, but Dr. Clark, of Toronto, says it was impulse that did this, and Dr. Clarke, of Kingston, says it was impulse, and Dr. Anglin, of Montreal, says it was impulse, and then I picked up a book containing the lectures delivered by Dr. Clarke, of Toronto, as a university professor to his students, and I read him his own statements out of the book, ridiculing the idea of impulse being the ground for committing murder, and ridiculing the idea of moral insanity being set up in justification. I will read you the three sentences:—

“It was a common thing years ago for a guilty man to escape under the plea of impulsive insanity. No man becomes insane for a few moments to accomplish a specific act.”

And, again, speaking of impulsive insanity, he states in this same book, page 45: “This is sometimes called temporary insanity. It has been used in the United States Courts of Justice for many years to shield criminals from receiving the just deserts of their crime. . . . The plea for there being such a form of insanity is absurd in the highest degree.”

Again, in the same course of lectures, he says (page 59) this in regard to moral insanity:—

“Pritchard calls this moral insanity—The insanity of morality is a better name. The term as used in the Courts of Justice has allowed many criminals to go unwhipped of

justice." So the very cause designated by three doctors for the homicide forms a subject of the fiercest condemnation by one of the trio.

If this man became insane for a few minutes to accomplish this act, how does it happen he became afterwards like any other ordinary person, seeing that he would say nothing until he had seen his Counsel? Dr. Clark, one of the experts, says, "No man becomes insane for a few minutes to accomplish specific acts."

MR. ST. PIERRE, Q.C.—You ought to give his answers as well.

MR. MACMASTER, Q.C.—The doctor gives no explanation. He said he agreed with them.

MR. ST. PIERRE, Q.C.—First of all, he said the book was not his, that he would not take that as part of his evidence, and consequently that what he meant there is, that a man will not turn crazy all at once, unless there were signs of insanity before that, if he was a moral imbecile before, and if there was heredity, then the matter is quite a different one.

MR. MACMASTER, Q.C.—Very far from it. He said that although that book was written by a student, he agreed with it.

MR. ST. PIERRE, Q.C.—No.

MR. MACMASTER, Q.C.—He gave no explanation with regard to that. It was in regard to moral insanity that he gave an explanation, and, more than that, I would not be guilty of misrepresenting him.

MR. ST. PIERRE, Q.C.—I do not say you would do that, but I say you only give one part of it.

MR. MACMASTER, Q.C.—I am quoting with regard to impulsive insanity, and the exact part in this connection I quote is this, under the heading of "Impulsive insanity."

"This is sometimes called temporary insanity. It has been used in the United States Courts of Justice for many years to prevent criminals from receiving the just deserts for their crimes. The plea for there being such a form of insanity is absurd in the highest degree."

Now what Dr. Clark quarrelled with was this, it was not

with the words "impulsive insanity," but it was with the transitory insanity, "temporary insanity;" and he objected that these words were introduced into his lecture, and that they were not the proper words at all, and he never withdrew his words about impulsive insanity, but on the contrary adhered to the view that the plea for "impulsive insanity" is absurd in the highest degree.

Now, I have the deposition of Dr. Clark before me. Mr. Fraser has handed it to me, and I will read what he says:—

Q.—Now, did you, in one of your writings, one of your books, say this: "It was a common thing years ago for a guilty man to escape under the plea of impulsive insanity; no man becomes insane for a few moments to accomplish his specific acts?"

A.—Exactly. I agree to that yet. Insanity is a disease, and however sudden the invasion may be, it has got to go through its course of symptoms, and terminate like any other disease, but the book you are reading from is not my book.

Q.—It is not your book?

A.—No.

Q.—Are you not Dr. Daniel Clark?

A.—It is Notes by a Student; I would not like to be responsible for its contents.

Q.—Are not they your lectures?

A.—Yes, but I would not like to acknowledge them without revising them. But I agree with what is stated there.

What does his explanation amount to? You may depend on it, gentlemen, that when Dr. Clark comes into this box and swears that this crime was committed from impulsive insanity, and when I take up a book, reported by one of his students, of his public lectures, and he agrees with him that this is a correct statement, although he did not write it himself, you may depend on it that he finds he is in contradiction with himself, and will try to wriggle out of it. I will do him the justice to believe that the opinion deliberately expressed in his lectures is the more correct. This is the sum and substance of it, that Dr. Clark of Toronto puts the sign

and seal of condemnation on moral insanity, and on impulsive insanity, just the same as Lord Chief Justice Denman did upon the same two things in the passage I read to His Lordship this morning. If that is so, how can Dr. Clark, of Toronto, and Dr. Clarke, of Kingston, and Dr. Anglin, come into this box and attach any weight to these two things? You and your families, and everybody connected with you, may be the victims of any villain who will put up a scheme to murder, if the prisoner is to be let off on the plea of impulsive insanity and moral insanity, if he can say that sudden impulse drove him to murder, or that the "devil drove him to do it, or that he got an order to do it." What sort of an excuse is that for trampling on the laws of the country? As Mr. Justice Stephen said in one case, "If a man tells me that he should be excused for committing murder because he got an order from Heaven to do it, I would not excuse him. I would hang him, unless I got another order from Heaven not to carry out the sentence." And as for moral insanity and moral imbecility, what does all that mean? Does that mean that you are to excuse him because he has not morality enough to obey the law? The law takes no cognizance of such a defence. You are to allow the man with a fair average amount of intelligence and morals to be punished, but the biggest scoundrel—the man who is utterly criminal, and who has put himself in defiance of the laws of God and man—is to be spared. The idea is outrageous, and society could not be held together for one day on such terms.

I want to refer to the evidence of Dr. Bucke on another score, with regard to this man being a moral imbecile. He said in my cross-examinations on ~~the~~ last day, when confronted with the characteristics that this young man had, that if he had just one characteristic more, "affection for his mother," he would take him out of the imbecile class. Then I went to work, gentlemen, and I tried to persuade Dr. Bucke that there was ample proof in the record that the boy was affectionate and loved his mother, but he would not acknowledge it. Here are Dr. Bucke's words: "If it could be shown

to me that the boy really loved his mother, I would at once say that he is not a moral imbecile."

Here are the mother's words :—

Q.—Then from that time, up to the time that he left to come to Canada, was his temper increasing, was his passion increasing or not?

A.—Increasing very much from about the time he was about sixteen.

Q.—It increased very much from the time he was about sixteen?

A.—Yes, but he was a most loving, obedient, and good child to me always.

Q.—Did you try to teach him his religion?

A.—He was a very pious child, the most so I ever knew. He used to go to mass every morning, and used to pray repeatedly during the day, and I never saw a child that had such devotion as he had.

A.—He wrote me—I think—well—he might once have missed a day or two, but he wrote me once, twice, and three times a week. I used to think he used to spend his whole evenings writing to me. He used to send such long letters, such long, long letters.

Now, Dr. Bucke said, if he could only get evidence of affection, that he would rule him out of the imbecile class, and when I confronted him with this, he would not take it, he would not take the word from the sorrowing mother's heart for the affection of her child, because it would defeat his plan of putting the prisoner down as a moral imbecile. But, I put it to you, gentlemen, if all he wanted was affection, was there not affection proved by the mother? Is it not there? And Miss Anderson said he loved his mother always, and he wrote to her and spoke affectionately of her. Here are her words:

Q.—Did the prisoner use to talk about his mother in an affectionate way?

A.—Yes.

Q.—He was fond of his mother?

A.—Yes.

Do not you find proof of affection there? If you do, put it in where Dr. Bucke would not, and rule this boy out of the imbecile class.

Now, gentlemen, there is another branch of the medical evidence that I must refer to. The doctors told you that he was an imbecile for certain reasons, and they gave you the reasons. I do not intend to go into that at any great length: they said that he was indifferent, egotistic, had marked delusions, was cruel to a cat, attempted to burn an hotel, a fatalist, had deficient memory, had eccentricities of dress, conduct, and specially in eating and drinking. Those were the principal reasons that they gave for his being an idiot or imbecile. How do they know that this boy was indifferent? Does it seem like indifference, that he wanted to have the advice of Counsel immediately after the murder? Does it seem like indifference or callousness that he refused Dr Villeneuve an examination? Or does it not show wise prudence? Dr. Clarke, of Kingston, says that he got an illustration of cruelty, in the fact, that the accused told him that he threw a cat into the fire. Is there one word of proof in regard to that cruelty? The prisoner told him that he threw a cat into the fire at Valleyfield. Dr. Clarke took that without one word of question. Is there one word of proof before you on that? Dr. Clarke said, the prisoner told him that he had set fire to an hotel in Belleville. Is there one word about that in proof? Not a word. Dr. Clarke was rendering his opinion on false and foundationless premises. But even, if the prisoner had set fire to an hotel, what does it point to? Not the lunatic, but the criminal—again the criminal, always the criminal. Dr. Clarke says, “prisoner thought he had a right to shoot people.” On cross-examination, that turns out to be, he thought he had a right to carry a pistol for purposes of defence.

Fatalism: The prisoner thought that things which are to be, will be. Is there anything peculiar about that? Why,

one of the greatest of the ancient philosophers accepted that as his creed, and a second, perhaps exceeding him in eloquence and learning, adopted and elaborated this belief. And to-day there are many men in the world who believe in fatalism, and one branch of it (not the branch without God, but the branch with God) is imprinted upon the Calvinistic Presbyterian Church, by the terms of whose catechism it is declared that "God hath fore-ordained whatsoever comes to pass." Fatalism is not to be put down that way. It is one of the recognized systems of thought in the world to-day, and it will be so as long as the world lasts and men think. So, if this boy betook himself to thoughts of fatalism in his desperate straits, why, there was nothing more natural. Dr. Clark, of Toronto, when pressed, explained how he put him down as an imbecile. He says he was only a child, he could only talk of childish things, like a child of ten years. I asked him "What did you talk about?" and he replied "Fatalism." Well, gentlemen, imagine a doctor commencing to talk to a child of ten years of age about fatalism. I said "that is too much for me." But that is where the doctors have gone wrong. The doctors have been stuffed by the prisoner, the prisoner had his story well in hand, and he had it well settled. He put on a chirpy air, he put on a la-di-da style of indifference, which is quite different from the style he has in the Court House. We are told when they visited him in the cells that he received them with smiles, that he gave them cigarettes, that he was cheerful and quite indifferent, and spoke of the different qualities of cigarettes and about this thing and the other thing, that he was quite at ease. It is not in keeping, gentlemen, with the appearance of the prisoner in Court here, and when I asked Dr. Clarke, of Toronto, "Is it possible for a sane man to feign that appearance?" he replied, "Yes, it is possible for a sane man," and I put it to you, gentlemen, since the appearance of this prisoner has been called attention to—I would not have done it otherwise—whether it is possible for an insane man to have preserved

the attitude and composure that the prisoner has during this trial ?

Oh, the doctors say, he has eccentricities about clothes. What eccentricities ? He said to Dr. Anglin that he did not like to live in a large city because he did not like to keep up the fashions—silk hat and frock coat, I suppose. Is it not natural for a young man to prefer to live in the country where he would be free from these restraints, where he could put on his knickerbocker suit or plain checks ? Are there not sons of noblemen who prefer the life of farmers in this country and the North-West to keeping up the style of St. James's street ? Men have their tastes, and is this man a fool because he expresses a preference for some particular style of dress ? Surely nothing could be more absurd. They say he has peculiarities of eating and drinking, or rather of "smoking and drinking." Why, gentlemen, it is put down as one of the marks of his insanity that while living in the midst of temptation, and coming from Ireland, where there is something taken occasionally from the *cruiskeen lawn*, this young man, notwithstanding all these temptations, remained sober and did not drink ! So that even the boy's virtues (and goodness knows, he has vices) even the boy's virtues are brought to his condemnation to mark him down as a fool. Well, gentlemen, any man, it seems to me, whether he be a doctor or whether he be a lawyer, or anything else, who puts sobriety in a man down as an indication of imbecility, stamps himself as an imbecile. Then, they say he has a defective memory. Why, gentlemen, some of the ablest men who ever lived have had defective memories, and one of the greatest lawyers of the American Bar had such a bad memory that when he proposed the health of the American President, he always kept the chief magistrate's name on a card before him. Many able men have bad memories. A bad memory is not characteristic of insanity. But had the prisoner a bad memory ? Where is the evidence of it ? Look at the events that happened in Ireland which he remembered, Look at his recollection in regard to the crime itself, if for a moment we are to credit Dr.

Anglin's statement. He told him in August what happened months before on the 1st of March, how the accident happened ; look at the interviews with the different doctors, though they are not evidence, they may be taken as admissions against him, and they certainly are evidences of recollection. He gives them different particulars of different things. Do you think, gentlemen, that this man can be set down as a fool for want of memory ?

Wanting in affection ; another reason. Where has the boy been lacking in affection ? Has not he been affectionate to his mother ? Is it not proved by his mother ? And what higher or better proof do you require ? If there was another proof required of affection, why were not these "long, long, letters" written to his mother from Valleyfield, two or three per week, produced ? They would have told the double story whether he had real affection and education, as nothing else in this world would have done. Why were they not produced before the jury ? They would have told the story, and have shown the operations of his mind and heart. But we have them not. And where are the letters written to Miss Anderson by the prisoner ? Where are they, gentlemen ? Handed by Miss Anderson to the prisoner's Counsel, Mr. Foster, and destroyed by him. If we only had these, would not we have some evidence of his intelligence ? Would not we have some evidence of the relationship between Miss Anderson and the prisoner that might throw some light on this matter ? But they are gone, and we will never see them more. They were destroyed by the Counsel for the prisoner.

Before I pass away from the medical evidence, I must call your attention to the grounds on which they put this young man down as insane. They say that after being a moral imbecile, he became insane, that he had some disease of the mind. They cannot mention any, but they give certain symptoms, and say these are symptoms of insanity, and what are they ? They are that the prisoner at the Bar had certain delusions, that he had delusions with regard to Simpson, and

with regard to certain events in Ireland, and they say he had also certain hallucinations. Now, what are the delusions they say he had in Ireland? They say he had delusions with regard to being attacked there, and that he carried a pistol in consequence, that he thought that the cattle-men might attack him, and that he carried a pistol to defend himself; also that his father took mad fits, and he carried a pistol to protect himself against his father. These are the delusions that they speak of. Now, let me speak to you gentlemen, for a moment, with regard to these delusions. In order to constitute a delusion, it must be that the prisoner has some misconception of fact, that is to say, he must believe that something exists that does not exist. If I believe that I am the Governor General of Canada, and I issue orders with regard to public affairs, and cannot be reasoned out of the idea—contrary though it be to fact—that I am the Governor General—then I am under an insane delusion, and my mind, my reason, is eclipsed to that extent.

[Here an adjournment was made for half an hour, after which Mr. Macmaster, Q.C., resumed his address to the Jury at 1.35 p.m.]

May it please the Court, Gentlemen of the Jury :—

At the adjournment, I was proceeding to discuss with you the question of delusions, and how far the prisoner at the Bar was under a delusion, or under hallucinations, so as to affect his mind. You know that the doctors said that he was suffering from moral imbecility, and that to that moral imbecility there supervened, there came an addition on the top of that, insanity, delusional insanity. When I asked for the indications of delusional insanity, they said that there were certain symptoms, and it is now necessary for us to consider what the symptoms were, and what the hallucinations were, in order to see if these were real delusions, and real hallucinations, or only improvised for the occasion. You know that a delusion is a complete misconception with regard to

a matter of fact. I gave you an illusuration of that before the adjournment, and I gave you an illustration of that during the course of the cross-examinations. For instance, I gave you the illustration, taken from Mr. Clouston's recent book on "Mental Diseases," of an old man in the Morningside Asylum who "thought he had lived a thousand years, that he had known Noah rather intimately, and found him a most sociable man, but a little too fond of his toddy, that he once went out snipe shooting with King David, who was a crack shot, and one day gave St. Paul a lift in his gig on the Peebles road."

Mr. Clouston, who is the author of the book from which I read this extract, says, "This is a sample of delusional insanity, or monomania." The doctors that I cross-examined all agreed to this being a good illustration of delusional insanity, and you will see that that lunatic who was confined in that asylum had those misconceptions of fact. He thought he had lived a thousand years, that was not so ; he thought he was on intimate terms with Noah, that was not so ; he thought that he had gone snipe shooting with King David, that was not so ; and he thought that he had given St. Paul a lift on the Peebles road, that was not so. None of these things were facts. Now, in order to have a delusion, you must believe in a state of things that is not fact. When you believe in a thing that is not a fact, and cannot be persuaded or reasoned out of it, that is a delusion. Well, now, they say that this young man had delusions because he carried a revolver in Ireland, but he said the reason for it was that there were some rough characters among the cattlemen in Ireland, that he carried it for self-protection, and he also said that his father sometimes took "mad fits," and that he carried it for protection against his father. These are the two instances of delusion that are referred to in Ireland. Well, now, in order to test whether there is any delusion there or not, the first question you have to ask yourselves is, Was it a fact that he carried a revolver on account of their being rough characters among the cattlemen? Was it a fact that he carried a

revolver because he feared some violence from his father? If it was, there is no delusion. It is not proved that it is not a fact; it is not proved here that there were no rough characters in Ireland among the cattlemen? It is not proved here that he may not have had reason to protect himself against his father? So that, gentlemen, these are no delusions at all, they are simply opinions that the boy had. You know in the western country here, the cattlemen, the cow-boys, nearly all carry revolvers. And it is not improbable at all that in Ireland, as elsewhere, there are rough characters among the cattlemen as here, and it may be that this young man simply carried a revolver because he had an idea that he might sometime be attacked by them, or that he might be attacked by his father; or he might have held the idea that the cattle dealers, as Mr. Morrison said, might some time attack him and his father, and therefore he carried the revolver as a protection for his father and himself. Until it is shown to you, and shown to your perfect satisfaction, that he was wrong about the fact, there is no delusion with regard to his carrying a revolver in Ireland. You know that Morrison came here and told us two or three things about carrying a revolver, and among other things he said that the prisoner's father had some difference with the cattle dealers, and with the men of Ballybricken, which is a suburb of Waterford, as proved in the Commission, and that the prisoner carried a revolver to protect himself and his father against the cattle dealers, and against the Ballybricken people. May that not be so? Is that a fact? Is it proved not to be a fact? His father was present in Court here, and if he wished to prove that that was not a fact, if he wished to prove he had no difference with the cattlemen, and that there was no reason for carrying a revolver, he might have gone into the box and proved that it was not a fact. But he did not do so. On the other hand, gentlemen, in that same conversation with Mr. Morrison, the prisoner at the Bar made some other statements to him that showed his intelligence, showed that he was a man of reading, showed that he paid some attention to English politics. He

said he was a Conservative himself in English politics, and as between the two Irish parties he preferred the Parnellites, and he expressed the opinion that the McCarthyites were "no good," which shows that he was able to reason on political matters. Suppose that this was a wrong statement made by the boy ; suppose that he was in error in saying that he carried a revolver to protect himself and father against the cattlemen ; how easy it would have been for Mr. Shortis, the father, to have gone into the box and said, "I never had any difference with the cattlemen ; we never had any trouble about competition ; there was no reason why my son should have carried a revolver. That question never came up, and moreover, my son is not a Conservative in English politics, and he was not a Parnellite in Irish politics."

There is not one single word of contradiction to the statement that the boy made to Morrison in that respect, and I respectfully submit to you that the boy honestly, though possibly mistakenly, did carry a revolver in Ireland, for part of the time, because he feared the cattlemen, or because he thought his father had mad fits, or because he thought his father was liable to attack from the cattle dealers and the rough characters of Ballybricken.

Another thing, gentlemen of the jury, you must not place too much stress on the expression that his father had "mad fits," for you know that in common language we say a man is "mad" when he is angry, we say he had a "mad fit ;" and it may be that the story retailed through a number of people who heard it years ago has not suffered anything in growth and stature in the descent. And besides, we have the authority of Dr. Clark, of Toronto, who said that the Greek word for "madness," namely, "mania," in the Greek language, does not merely mean madness in a legal sense, but that it also means "excitement." So in our common language we talk of a man being "mad" when we do not mean he was mad in a legal sense, but simply angry ; and this tale is fairly open to the construction that this boy carried a revolver as a protection because his father got very angry with him at

times, as I have no doubt he did, and perhaps for good reason. So much for the delusions in Ireland.

Dr. Clarke, of Kingston, says that "the most marked delusion that the prisoner had"—and he puts it down as a symptom of insanity—"was with regard to Mr. Simpson, of Valleyfield." He thought Simpson had done him an injury, and he became very excited when he spoke in regard to that, and the doctors discovered that this was a clear delusion. Well now, gentlemen, let us examine and see if this was a delusion. In the first place, the boy was dismissed from the employment of the mill. He was not dismissed from Mr. Simpson's office, but he was discontinued there, and he went into another department of that mill. In addition to that, Mr. Simpson told him he was not to go to the Andersons' house—the Anderson family and the Simpson family were not on good terms—and Mr. Simpson, for reasons of his own, prohibited young Shortis from visiting the Anderson house, and Shortis disobeyed him. Shortis told this to the Andersons and to McGinnis; and after he left the employ of Simpson, and went into the mill, and was dismissed from there for keeping irregular hours and going to the Anderson house, he very naturally felt aggrieved and injured. He practically said to himself, "The whole cause of this business is because I am going to the Anderson house, and Mr. Simpson is trying to control my local relations outside of the mill. It is wrong. I feel hurt by it; I love this young lady; I want to go to the house, and I feel that I am injured by him." Well now, gentlemen, was that a fact or was it not? Was it not true? Was it not true that Mr. Simpson had forbidden him to go to the Anderson house? Was it not true also that Mr. Simpson discharged him? Was it not true also that Mr. Simpson had him discharged at a later time for not keeping regular hours, and also for going to the Anderson house? All these things are true; so, where could the delusion be with regard to that?

I just now pointed out to you that a delusion consists in believing in a state of facts that does not exist. But you

know Shortis believed in a state of facts that did actually exist, and we are not compelled to rely upon the opinion of what he told the doctor in the jail at Montreal, or anyone anywhere else, because we find that he wrote a letter to Mr. Gault, and in that letter, gentlemen, he stated what his trouble was with regard to Mr. Simpson.

I will now read that letter :

Mr. Lomax read the letter to the jury at Mr. Macmaster's request. It is as follows :—

“ Private.

“ VALLEYFIELD, P.Q., Wednesday morning,

“ January 30th, 1894.

“ DEAR MR. GAULT,

“ It was with the greatest horror and indignation that I heard last evening what kind of stories Mr. Simpson has been circulating about me, in Montreal, viz., about a conspiracy being on foot to kill him. Certainly I was told that he would use every method in his power to put me out of this town, but I never for a moment thought he would resort to a ridiculous, improbable story, about my entering into a conspiracy to kill him.

“ Poirier, who was the chief of police here formerly (but owing to habits of intemperance lost his position) told me this evening that Mr. Simpson told him to tell me “that if I did not leave the town, he would have to put me in jail for conspiring to take his life.” The reason Mr. S. is so anxious to get me to leave is, he hates Miss M. G. Anderson and her brother, because their mother, now Mrs. McGinnis, and him are very bad friends, and on the 24th, or thereabouts, of last month, he told me I should not speak to Miss Anderson or her brother in the future, because he made up his mind that none of his friends or any person in the mill should have anything to do with them. Is not that as great a piece of high handed boycotting as ever you heard about? I certainly think by such conduct Mr. S. displayed an awful amount of petty spite, to say the least of it. I would not insult any

friend of mine by behaving in such an unmannerly way, and notice the result ; first I am told I must leave the mill, and then a trumped up charge is brought against me. In Canada such a story cannot fail to be ridiculous. Are you not astonished, Mr. Gault, at any man doing such things as Mr. S. to vex a person whom he dislikes? Rather hard on the person that he selects to use as the punishing medium. Will you please tell me what to do? Here I am all alone without one to advise me. I shall see this morning Mr. S. and will tell him that he shall have my answer within a week. Such nonsensical thoughts as my prowling about the mill waiting to kill any person. I am too young to right away decide my conduct, but pray to our good God that you will tell me what you think best for me to do, and in the meantime tell Mr. S. to stay proceedings for a week. You have been formerly so kind to me that I feel that you advise me in my hour of trouble. If I will be permitted to stay here, I expect to get a position in the office of one of the lumber mills here. Should I be forced to go away what am I to do? Goodness only knows. Should you like to hear an impartial account of my conduct whilst here, I feel confident that you will receive a good report about me if you write to anyone who knows me. There are more ways than one, you know, to tell every story. Won't you please try and get an impartial one before you judge me? Thanking you from the bottom of my heart in anticipation for your advice, and former kindness : also hoping you, will forgive my giving you so much trouble.

" I remain,

"Dear Mr. Gault,

" Very gratefully your friend,

(Signed) " F. V. C. SHORTIS."

Now, you will see from that letter what sort of memory the prisoner has, and you will see that he states what his trouble is, and he states a fact. He states, that he has been prohibited from going to the Anderson house, and he states, he

has been dismissed from the mill ; he states, in addition, a lie, viz., that Mr. Simpson is circulating a ridiculous story about his attempting to shoot that gentleman. That shows the criminality of the man. As a matter of fact, at that time, the story that he intended to shoot Simpson had become known to Poirier, and Poirier had gone to the prisoner, and the prisoner evidently feared that Mr. Simpson would carry out his threat, and would arrest him if he did not leave the town. This young man shows much cunning, wit, and ability in writing this letter to Mr. Gault, who was Mr. Simpson's senior, pretending that this was a ridiculous story about wishing to shoot him, and asking Mr. Gault to stay Mr. Simpson's hand for a week. But he states in that letter what his grievance is with regard to Mr. Simpson, and his grievance as stated there is that he was prohibited from going to Miss Anderson's house, and that he was dismissed from the mill. Now, are these facts, gentlemen? Are they not facts? They are facts. His grievance is a grievance, and therefore there is no delusion. It is simply this, gentlemen, it is simply a case of a man estimating the injury that has been done to him. It is a question of measurement. This young man thought, and, perhaps, with some reason, that it was a very hard thing indeed, that he should be prohibited from going to the Anderson house. I do not make any reflection on Mr. Simpson. Mr. Simpson may have had perfectly good reasons for not wishing his private secretary to go to the house of the Andersons, who were deadly enemies of his. But this young man was a stranger to all these feuds. He was an outsider ; he loved this girl, and it may have seemed to him a great injury and grievance that he could not go to that house. He also had been dismissed, and he complained of that. He complained of two things to Mr. Gault. They are not delusions at all, they are facts, and not delusions ; and, as Dr. Clarke, of Kingston, acknowledged to me, if a thing is a fact, it is not a delusion at all. Well, now, gentlemen of the jury, this is not the first time that this important question with regard

to delusions came up. In the case that I referred to, and that Mr. St. Pierre referred to, the other day—the case against the Earl of Ferrers, a member of the House of Peers—the same question arose. The Earl had a quarrel with his wife, and his wife instituted divorce proceedings against him, and she got a divorce. There was some question about his estate and a coal mine, and his former agent, a Mr. Johnson, had taken a particular course, adverse to the Earl, in regard to the coal mine, and he had also taken part against the Earl of Ferrers and in favor of Lady Ferrers, when the divorce proceedings were going on. The result of this was that the Earl of Ferrers conceived a terrible hatred to Johnson, and put Johnson down as his enemy who tried to interfere between him and his wife. That is to say, he had a grievance. Now, that is a fact, he had a grievance; it was a reality. Later, he sent for Johnson, and Johnson came to his house. Johnson was practically in the position of his steward, and he deliberately slew him. The man did not die immediately, he lived for some hours, but he died soon afterwards; and that Peer, Peer as he was, was brought before the House of Lords, and a full hearing was given to his case. His plea was insanity, viz., that he was under a delusion in regard to Mr. Johnson. Mr. Yorke, then Solicitor-General, who afterwards became Lord Chancellor, argued the case for the Crown, and in that argument it was pointed out that what the Earl of Ferrers complained of was not a delusion at all, but a fact, a grievance; and that a grievance could not be treated as a delusion, that a man could not pretend that because he had an extreme ill will against another he had therefore the right to slaughter him. Much less had the prisoner a right to slaughter Simpson's clerks and subordinates, for, even if there were a delusion, there must be a connection between the delusion and the killing. And there is none here. The grievance was against Simpson, not against John Loe and Maxime Lebœuf. This principle was recognized by Erskine in the case of Hadfield, and is now universally accepted. The House of Lords refused to recog-

nize a grievance as a justification for killing, or as a symptom of insanity, and unanimously decided that the Earl of Ferrers should die ; and die he did, on the public scaffold. I only refer to that, gentlemen, in order to show that what is complained of here is not a delusion at all, it is a pure and simple matter of grievance, and the doctors are entirely wrong in treating it as a delusion. They say a delusion is a symptom of insanity, but if this symptom fails, where is the insanity? Now, gentlemen, very far from this being a delusion, what do we find? We find that young Shortis goes to the office of Mr. Simpson, after Mr. Simpson had heard about the attempt to kill him. He goes in there, and asks him for a character. Mr. Simpson says, "I cannot give it to you." But Shortis said, "You promised me one when I left you the first time." "Yes, I did," said Mr. Simpson, "but times have changed since then." Simpson had heard of this design to kill him, and he refused a character, and Shortis turned around and said, "You are no gentleman—my day will come, every dog has his day, and my day will soon come." Now, gentlemen, that conversation took place in the early part of February, some time about the fifteenth of February, as near as I can recollect. On the 20th of February, Mr. Simpson left Canada to go to the Southern States, and he remained away until about the 3rd or 4th of March, so that Mr. Simpson was not here at the time of the tragedy. We have a side light thrown on the remark that was made by the prisoner to Dr. Clarke in the Montreal Jail. It is an admission against the prisoner, and what did he say to Dr. Clarke in the Montreal Jail? The prisoner said to Dr. Clarke that he went to Mr. Simpson's office that day, for what purpose? To get him to insult him, in order that he might have an excuse "to clean out himself and his clerks." That is the prisoner's admission, that is his own statement to Dr. Clarke, which is proved on behalf of the defence ; and here is the most explicit admission that possibly could be had, that the prisoner had it in his mind, not merely to kill Simpson, but to kill Simpson and his clerks. Simpson fortunately was out of the country in the Southern

States until the 3rd of March, but his poor unfortunate employees received the fell blow in a way that is sad to relate. Now, even Dr. Bucke had to admit that the prisoner's statement to Dr. Clarke indicated premeditation. He and the other doctors said with regard to the general robbery that they saw no motive and no premeditation, and of course they saw nothing except what pleased them. But I suppose nobody else but the experts would have said that ; still that is what they all said. Dr. Bucke was compelled to admit, when confronted with the fact that the prisoner at the Bar said he went to Simpson's office with a view to make him angry, so that he might clean him and his clerks out, that that indicated premeditation and desire for revenge. If at a later time the prisoner was able to unite that revenge to the motive of money, to the tune of fourteen thousand dollars, it does not lessen in any degree the enormity of his crime.

I trust I have disposed of the delusions, and to your satisfaction. Why, gentlemen, just imagine for one moment what would be the consequence if what is here set up could constitute a defence. Now, I will take the case of a dispute between Mr. McHardy and Mr. Cunningham. Suppose that the first juror conceived a terrible hatred to the twelfth juror, and that Mr. McHardy had, from his point of view, a very grievous complaint against Mr. Cunningham, and that he took it into his mind to go to Mr. Cunningham's place some day, and finding him away from home, drew a pistol and slaughtered two or three of his family. He would be in exactly the same position that the prisoner at the Bar is to-day, barring, in this case, the added motive to acquire a large sum of money. Would it be an excuse for Mr. McHardy that he went to Mr. Cunningham's, and because he had some complaint against him, drew his pistol and shot two or three members of the family ? Can you admit that doctrine, and if you cannot, how can you distinguish it from the doctrine contended for on behalf of the prisoner at the Bar ? I say, gentlemen, it would ruin social order, and it would destroy the peace of the

community, if that could be recognized, and I trust, with your sound judgment, and your common sense, you will never put the stamp of your authority on the proposition that, stripped to nakedness, just amounts to this, that this young man should be excused for killing the clerks of the Cotton Company, because he hated the General Manager. Now, this is what this delusion business comes to. It is no delusion at all. Ask your common sense. You can measure it better than I can. You know what it was. It was simply a piece of hatred and spite against Simpson, that might have been more or less well founded from the prisoner's standpoint; but, in the name of all that is sacred, are you to recognize the fact, that because a man may take an extreme view of a difference he has with another man, he can arm himself with loaded weapons, that he can go and slay that man, and those under him? If you do, gentlemen, you put a rapier into the body politic of social order. The only real delusion here is the marked delusion of the doctors.

There only remains, in connection with this question, the subject of hallucinations, and I partially dealt with them before. What do they consist of? Simply hearing and seeing certain things at the Anderson house. Hearing certain noises, saying he heard certain voices. Do you think he ever saw faces, or heard unnatural noises? Or, if he did, do you think the Anderson house was the only place in which he heard them? How are you to account for the fact that he never spoke of them to his friends, never saw strange faces at the hotel, or in Ireland, and only saw them in the very family, with some of the members of which he was hand in hand in a deep-dyed conspiracy to murder Mr. Simpson? Do you believe that, gentlemen of the jury? Can you believe that? Is it rational that you should believe that? I will tell you, there is another view with regard to these hallucinations, and that is, that they are not hallucinations at all. The young man may have wanted the window-blinds closed; he may have wanted that they should not be overlooked in the house, for more reasons than one; but not to suggest any

other, voices could be heard from the road. Mr. McGinnis tells us so in his deposition. The window could be overlooked from the road : Mr. McGinnis says so in his deposition. And this young man, when he went to the house first was forbidden to go there. May he not have wanted the blinds drawn in order that he might not be looked in upon or seen ? Mr. McGinnis had divulged the scheme of killing Mr. Simpson. Simpson had gone to Poirier, the constable, and Poirier had gone to the prisoner, and said to him in his room in the hotel : " Now, I want to tell you that you are in a scheme to kill Simpson, and Simpson says that unless you leave town within a week you will be arrested." What does the prisoner say ? " Who is the witness to that ?" Does that look like a fool ? " Who is the witness to that ? Bob ? Is it Bob ?" " Yes, Bob," (meaning McGinnis) Poirier answers. And then the prisoner turns around, and exercising the mind and understanding that he undoubtedly possessed, said to Jack Anderson, who was present, " If Bob comes against us, it will be bad for us." How is that for intelligence ? How is that for ability to distinguish right from wrong ? How is that for knowledge that he had broken the law of the country ? How is that for comprehension of whether he should be punished or not ? The prisoner says he will give an answer in the morning to Simpson, and Poirier goes away. Let us pass that by. He continues to go to the Anderson house after that, to be with this young lady and her brother. He knows what Simpson has said, that unless he leaves he will be prosecuted. He tries to get that stayed, but still there is a state of uncertainty. Is it surprising, gentlemen, if that man, knowing he was liable to be prosecuted for conspiracy to commit murder, is it surprising if he should not want his whereabouts to be known ? Is it surprising if he should want the window blinds drawn, so that Poirier might not come there and see what was going on ? In addition to this, if he was capable of having in his mind the shooting of Simpson, he was also capable of having in his mind the shooting of his clerks, and if he had that in his mind on that night, and I submit to you

that he had, is it not natural that on the eve of the commission of a great crime he should be uneasy and nervous and excited, and even if he were not nervous and excited when going out to commit that crime, what is more natural than at the hour of 10 o'clock at night, he should say to Jack Anderson, "Did you hear something outside? Is there anybody passing?" and that they should both go out together, scan the street carefully, look to the east and look to the west to see that nobody was looking on, so that when the prisoner left that house, and went into the mill, there should be no eye upon him to mark his going forth? What more natural than that? what more natural than that Jack Anderson, who was his accomplice in the other crime, should be his accomplice in this? I go no further than that, though perhaps I might; but certainly, I may go that length, for he was the accomplice in the other. What more natural than that he should wish to take precautions that the house was not overlooked before he sped to the mill? He leaves. He says he has a headache. He is going home to write a letter to his mother. Where does he go? He crosses to the mill. I leave the question of what happened there for a moment, and I will take the last thing that I have to direct your attention to in the medical evidence. It is the deposition of Dr. Garner, the gentleman to whom I referred in the forenoon, the gentleman examined in Ireland by the Defence on the medical question, the gentleman not referred to by Mr. Greenshields, the gentleman not referred to by Mr. St. Pierre.

MR. ST. PIERRE, Q.C.—I did. I referred to him, and I will again, if you will give me five minutes.

MR. MACMASTER, Q.C.—Five minutes. You took three days, and I think you had enough. Well now, I did not know that Mr. St. Pierre referred to this gentleman, but I am always quite willing to give my learned friends credit for having done a good thing. I am going to call your attention to Dr. Garner's evidence. He is asked by me this question in cross-examination :

Q.—Supposing that a man had killed another, and that there was no evidence of any ill-will between the parties, no delusion, no enmity, nothing but friendliness between the slayer and the other party, but that there was the presence of a large sum of money that could be taken possession of by the slayer—in other words, would an obvious motive of that kind have an influence on your mind?

A.—Oh, decidedly.

Q.—Is not Dr. Maudsley a very high authority on lunacy?

A.—Yes.

Q.—And he says that the presence of a motive of that kind, as, for instance, the acquiring of money, goes far to rebut the probability of insanity?

A.—Yes.

Q.—Do you agree with him in that view?

A.—Yes, I do. He is one of our greatest authorities.

Well now, gentleman of the jury, out of the mouth of the Doctor called in Ireland for the defence, the head of the Clonmel Lunatic Asylum, a man of great ability and distinction, you have this: If you have the presence of a sum of money as a motive, if you have a man kill another in the presence of a powerful motive like that, it goes far to rebut the idea of insanity, and he agrees with Dr. Maudsley in that statement of the case. Now, gentlemen, what have we got when we come to the end of the medical testimony? We have not only got the four doctors that appeared in Canada in conflict with one other, but we have got Dr. Garner, called for the defence in Ireland, and Dr. Maudsley, in agreement with us, with the Crown, that the presence of a sum of money supplies the motive, and goes to rebut the idea of insanity. So when you come to consider your verdict you will see that the Crown is not depending here on experts that it might call; because the Crown did not feel that it was bound to call them in a matter of such common sense, and more particularly when they found such support for their views in Dr. Maudsley, and in the witness Dr. Garner, called for the defence in Ireland. There are only two more points that I

will refer you to. One is the case of Lady Mordaunt. I read it to Dr. Clarke. I put it to Dr. Anglin, but he did not know anything about it, and I am not surprised at that, for it is a very modern case, and it may not have been sufficiently ventilated yet ; but I read the report of that case from the book of Mr. Pitt-Lewis and Dr. Smith, to Dr. Clarke, of Kingston, who is a very able man, and a very eminent man, and I called his attention to the fact that there was a question in that case as to the sanity or insanity by reason of a delusion, and what was the delusion there? All of a sudden, Lady Mordaunt stated, some eight days after the birth of her child, that the child was not her husband's child ; and of course a great scandal was created in society in England, and it became a highly controverted question whether this excellent lady was labouring under a delusion, or whether she made the statement as a mere matter of spite, or out of pure maliciousness. The doctors were called in, as appears by the report, and out of eleven doctors, five were one way and six were the other. So, gentlemen, when you come to make up your minds on the opinions of doctors, you must take into account the old proverb that doctors differ among themselves, and you may say to them in a matter of common sense, and where they have nothing to bring from science as an addition to the common stock of knowledge, "Doctors, settle your differences, teach yourselves, and when you have settled among yourselves, come to us and teach us." That is, in a matter of common sense.

Then one more point with regard to the doctors. It was most extraordinary to me, gentlemen, that these doctors should be asked whether that man could distinguish right from wrong on the 1st of March last, whether he had such a consciousness of his acts as to know what he was doing on the 1st of March last. In the name of common sense, how could the doctors, who only came upon the scene four or five or six months afterwards, tell whether that man knew the difference between right and wrong on the 1st of March last, or knew the nature of his acts, or knew that he was breaking

the law? What a hazardous thing it was for the doctors to say anything of the kind. Yet they said it. They pretended to pry into his heart, to find out what was passing in his heart on the first of March last, until Dr. Clarke, of Toronto, closely pressed to the wall, had to admit that it was only the Almighty Himself who could go into the human heart and tell what was passing there. But everyone had to come to the common brook to drink, every one of the doctors, because I put to them the authority of Dr. Maudsley, the head and front of the whole profession on this subject, I put to them this, whether he does not speak truth when he says :—

“No person, however acute, can dive into the depths of another person's mind and know what he does not know himself, how far his consciousness of right and wrong is vitiated on a particular occasion.”

Now, gentlemen, once they agreed to that proposition of Dr. Maudsley, and they all agreed to it, they gave their case away. Dr. Maudsley tells us there in plain language that no man, no matter how acute, can pry into the human mind, and find what is passing there ; no one except the Almighty Himself. So it all comes to this, gentlemen, that they do not know, they do not know any more than you do. As Lord Chief Justice Denman said, in a matter of common sense an experienced man of the world knows just as much about these matters as a doctor. You are not bound to take their opinion, and I ask you to put it aside, as Lord Campbell says, as entitled to scarcely any credit whatever ; and, in the face of the evidence here, you will be perfectly justified in doing it. If it has come to this, gentlemen, that through the power of money, through the ability to get doctors retained on one side or the other, the grand old rules that regulate the transactions between men, the grand old standards by which men's actions have been judged in the past are to be set aside, then, gentlemen, there may be grave questioning of the usefulness of the jury system. But I rely upon your common sense. Say the prisoner is insane if you will, acquit him if you will (it may be better to acquit him if you have grave doubts)

on your own good judgment, if in your hearts and souls you feel that it is just to do so. But I ask you in the name of common sense and justice, law and order, all of which you represent in that box, do not do so on the mere speculation of experts.

Now, gentlemen, that closes my review of the medical opinion, and you will see that that evidence is only given on one half of the case—on the evidence produced on behalf of the defence. What might be the opinions of the doctors to-day if given on the whole case? Suppose that that young man, instead of being a child of ten years, as they supposed—suppose that instead of being an imbecile, as they supposed, when he came from Ireland—suppose that instead of being a dunce, as they supposed, when he left Father Dunne—suppose that instead of being an ignoramus—it turns out that he is a young man who showed culture, ability, and education, and that he is up to the standard of intelligence of young men in this country of his age, how could these doctors put him down as a fool? How can they put him down as incapable of distinguishing right from wrong? How could they, having given their evidence as they did, in the first instance? Now, gentlemen, our system is very wrong with regard to that, if I may be permitted humbly to say so. In France, the law provides for an examination, an official examination of the prisoner. Doctors there are appointed to examine those alleged to be insane before going to trial. Those doctors have no interest in going to the right or to the left, they are paid out of the French treasury a handsome income annually, and when there is a question about the insanity of anybody they go and make a report, not merely on the condition of his mind, but they make a report on all the circumstances, so as to enable the Judge to apportion the punishment. Their position is semi-judicial, they are not partisan experts. So long as the doctors appear in the witness box, not in a semi-judicial capacity as in France, but as partisans on one side or the other, you will have their evidence characterized as Lord Campbell, Taylor, and Lord

Chief Justice Denman characterized it, and as I, in my comparatively humbler position, characterize it to-day. Now, gentlemen, I call your attention to the fact that the opinion the doctors gave was only, after all, half an opinion, or rather an opinion on half the case, and if I may be permitted to use an expression that may be slightly Hibernian, "the smaller half" of the case at that.

Let me call your attention to the Crown's rebutting case. First, I ask you, did the prisoner make out a case of insanity so as to relieve him? Did he satisfy you on the evidence he put in that he did not know the quality of his acts and what he was doing? I submit, gentlemen, that he did not. But so as to leave no doubt, so as to make it sure in the interest of justice, what did the Crown do? We called witnesses from Valleyfield, we called witnesses from Montreal, and we called witnesses from every place where this man lived in the country, and what do they prove? I do not wish to particularize, because I do not wish to take up much more of your time, as you have been indeed kind and indulgent, and most attentive too, to me. They prove that this young man is as sensible and rational as the average young man of his age in this country. He is eccentric, there is no denying that. He delights in eccentricity, and he is fond of pranks. But when it comes to sense, ratiocination, exercising his mind, and doing his work, he is just as sensible as the average young man in this country. Why, gentlemen, let me ask you one thing. You heard his letter to Mr. Gault read. Now I want you to ask yourselves a question. You have been brought up in one of the best sections of the Dominion of Canada—I know it well, and I know what I am talking about. The people in this section of the country, in these united counties of Huntingdon, Chateauguay, and Beauharnois, are as intelligent as any you can find in any part of the Dominion of Canada, from one end of the country to the other. You have only to see the evidences of intelligence—the buildings, the roads, the churches, the state of advancement of your agriculture, and your respect for law

and order. Now, we have twelve representative men of these United Counties in the box. I do not wish to offend you, but I ask you, gentlemen, of the twelve of you, now, how many could write a better letter than that young man wrote to Mr. Gault? A more intelligent letter, or a better statement of the case? Put it to yourselves. See how he makes his points. See how he even used craft to make his points. Note the expressions in the letter, the adroitness and the skill. Do you imagine, gentlemen, that that letter could have been written by a fool—by an imbecile? Far from it. He may have been a bad man, he may have been bad in his heart; he no doubt was, because he lied to Mr. Gault. He said it was ridiculous that these stories should be set in circulation about him killing Simpson—whereas they were perfectly true. He was lying to Mr. Gault, but he was making a clear and powerful statement of his case from his point of view. This letter is one of the strongest evidences of the sanity of the prisoner that could be produced. In addition to that, we have the testimony of Langlois, the hotel-keeper with whom he lived; of Mr. Smith, the Cotton Company's cashier, who was with him in the office; of Mr. Lowe, whose coolness and judgment saved his master's money; of Mr. Beaudette, the Mayor of Ste. Cecile; and of Mr. Desrosiers, who was employed at the same time as the prisoner in the mill office; and of Poirier, who met him in the town and in several other places—all of whom testified to his intelligence and to his good manners, and to his not being different from other young men. Then we go a stage beyond, and we have the evidence of Mr. Young, the foreman in whose department he was for a while, and we find that although not much was required of him there as an apprentice, yet he took an interest in the machinery of the mill, and displayed great skill and intellect with regard to particular appliances. His father told us the same thing, which confirms Mr. Young, that whenever anything went wrong with the mowing machines out in the fields in Ireland, the prisoner was the first to detect what had happened and to put it right, and for that reason his father

thought he would make a good engineer. Then we have the evidence of Mr. Sparrow, the mechanical superintendent of the mills, that he came with a plan to him, that he explained how certain changes could be made in the power, that those were proved practicable, and that the reason why they were not adopted was on account of expense, and not that he wished to revolutionize the whole of the power in the mill, as my friend Mr. Greenshields suggested. The question is, had he intelligence, and did he suggest a good thing? And then he saw a hot bearing in the mill machinery one day, and he went to Mr. Sparrow and said, "If, instead of iron and steel, the bearing was only made of phosphor-bronze, you would not have that degree of heat, and you could avoid inconvenience and loss resulting from the heating." This, it is proved, was a wise suggestion. He suggested a contrivance by which, by magnetizing a plate, the nails and loose iron in the cotton might be held so that they might not pass through the ducts and injure the machinery. All these things show intelligence and aptitude, and they confirm what his father said that he was skilful in regard to machinery. Gentlemen, how can you put that man down for a fool? Then you have those books, I wish you would look at the order books and see how they are kept, see how the stubs are made out. It is true in some of the earlier books, especially those he kept for Mr. Robertson in Montreal, there were some mistakes. We all make mistakes; there are blemishes in every one; there are spots on the sun. Gentlemen, we are none of us perfect, and we must expect that a learner will make mistakes, but look at the work and the extent of the work,—not a mistake made in the filing away of the letters of Mr. Simpson in those complicated files. Can that man be a fool? Did he not have intellectual power, because you cannot take cognizance of moral power? We have nothing to do with moral power, and it is a principle in the religion of many people that you cannot take cognizance of the fact that a man has no morality, because the great Creator has implanted a portion of his nature in every man, and it is supposed to

exist there, and to be capable of cultivation. Then we have the evidence of Dr. Sutherland to whom he went four times for professional treatment. He had conversations with the prisoner, and what does he say with regard to one of these conversations? He said he had quite a conversation about American and English railway cars, and that the prisoner pointed out that in the English railway carriage you got in and out by the side, and quite rapidly, whereas by the American and Canadian car you got in and out at the end, and the result was, it took longer to load and unload a train, and consequently that there was a saving of time in operating an English passenger train, that contributed greatly to the speed and dispatch of trains in the old country. That is perfectly true, and a wise observation. It is a well founded criticism, which would not be noticed by a fool. How many of you ever thought of that before? I must say that although I have travelled a great deal on four continents, and have travelled on the side-entrance, and end-entrance cars, the prisoner's astute observation never occurred to me before. But as an observation and criticism, it undoubtedly indicates an observing mind. Then he had a conversation with Dr. Sutherland about a book, about this book produced and filled, "Dr. Jekyll and Mr. Hyde." He asked Dr. Sutherland what he thought of the characters in that book, and Dr. Sutherland thought some of the characters were "too far fetched." What did the prisoner answer? "I do not know, I think there are some people like that in the world to-day," and what was the book? What were the characters? Why, Dr. Sutherland proved it, that it was a book in which one man appeared in a double character, and acted two parts in life. In one character, Dr. Jekyll, you have a respectable member of society, and in the other character, Mr. Hyde, you have a criminal. One personality in a double character. You can draw your own conclusions from his observation on these characters. Then we have the evidence of his intelligence and education from Dr. Ouimet. We have the evidence of his ability to work and his general

intelligence,—comparative intelligence—from his employer, Mr. Simpson. You have further evidence of his intelligence from Dr. Gauthier, and young Wilson, and from Mr. Tessier, who looked after the outside teaming work of which Shortis kept some account, and then we have the evidence of McGinnis that he knew the difference between right and wrong. We have the evidence of Mr. Palmer, of the Post Office, that there was some difficulty about a money order, and that when he was brought before him Mr. Palmer told him he would report the circumstances to the Postmaster-General, and the prisoner said, “You would not be such fools as to do that, and to show the Postmaster-General you did not know your business.” Then we have some evidence from Mr. Vallee, that I referred to before. Then, coming to Montreal, we have the evidence of Mr. Wright, the contractor, the old gentleman who was ill, and was permitted to sit while giving his evidence. What did Mr. Wright tell you? That he was two or three months sitting at the same table with the prisoner in Valleyfield, that he had conversations with him, several of them, about forty I think, that he was as intelligent as any ordinary young man of his age, and that he never saw anything in him that would indicate that he was not an ordinarily intelligent, well-mannered young man. This was but a few months before the murder. Do you think that a man like Mr. Wright, who is accustomed to handle railway employees by the hundred, would be deceived? Do you think he would not have observed, in two or three months, after these forty conversations with him, that there was any mental deficiency? Is Mr. Wright under the influence of the Valleyfield people? He is a Montreal man, who happened to be there in connection with some public works. Then, you have the evidence of Mr. Boyd who met him in a business way, but not very often. Then, you have the evidence of Mr. Morrison who met him in his house, in his family, who knew him as a friend, and he speaks of his intelligence. Then, you have the evidence of Brophy, the post-office clerk, from whom he got three pounds ten shillings

on a one pound order, and persisted in not returning the money, and ultimately only returned it when he was brought before the Post Office Inspector. And then you observe, gentlemen, that before he returned the money he made an affidavit before the Postmaster that he never got it, which shows his criminal character, and after he had to refund the money he asked young Brophy not to tell Mr. Hatchett, from whom he borrowed the amount to make the refund, the real character of the transaction. Does not that show he had a conscience? Does not that show he knew the difference between right and wrong, and did not wish to be despised for wrong-doing?

Then I referred you to the evidence of Mr. Matthews, Mr. Fraser-Crierie, Mr. Barnes, and Mr. Kendrick, in the early part of my address. Finally, we come to the letter to Mr. Gault, to which I have already referred.

Now, gentlemen, how is the case for the Crown rebutted? You see I went over the case for the defence at length, and I have gone over the case for the Crown very briefly. How was it rebutted? Was there a single witness called to rebut it except Dr. Bucke? Of course my learned friends went into the box with regard to the statement the prisoner made to Dr. Ville-neuve, that he was advised by Counsel not to answer. I do not think it was necessary for them to have done that, but they thought it was necessary themselves. But I would have been perfectly satisfied to take their word in regard to the matter. Mr. St. Pierre tells us he was the first Counsel to advise the prisoner, and that on the 4th of March last, three or four days after the tragedy, he advised the prisoner to say nothing about the matter to anyone. It is not at all improbable that the prisoner observed that advice up to the last moment, and did not say anything about the tragedy, except of course to the favoured doctors, Anglin, Clarke, Clark, and Bucke. Well now, gentlemen, against the array of fact, put it to yourselves, take it to yourselves, against the array of fact that we set up that this young man had ordinary intelligence and had ordinary education, and exceedingly good manners, notwithstanding that he was a little eccentric; against that

evidence what do the Defence offer in rebuttal ? Did they offer one witness ? Not one. The evidence of the Crown of his intelligence at the time of the commission of this act in the town of Valleyfield stands uncontradicted by a single witness.

MR. ST. PIERRE, Q.C.—We were not going to commence the case over again.

MR. MACMASTER, Q.C.—You had a right to rebut that evidence. My learned friends had a right to rebut anything that was susceptible of rebuttal in that evidence.

MR. ST. PIERRE, Q.C.—It was rebutted beforehand.

MR. MACMASTER, Q.C.—My learned friend states it was rebutted beforehand. If he thinks that, and is satisfied with that, well and good ; but you must see that there is not one particle of evidence from Valleyfield except that of Miss Anderson and Jack Anderson, on the part of the Defence, whereas leading men, representative of the whole bulk of the population that knew the man where he lived for months, and others from Montreal that knew him well, or had opportunities of observing him, came forward here and established the man's intelligence. Well, let us not dispute as to whether there was rebuttal, or whether there was not. There is the fact that there was ordinary intelligence, and as Sir James Hannen said, it does not require a high degree of intelligence for a man to know that he is committing murder. The only person called to pass an opinion on it is Dr. Bucke. You heard that opinion, and you heard him say, after hearing that evidence and after hearing that letter to Mr. Gault read, that it did not change his opinion. Now, do you think that any man could say that conscientiously ? You have common sense, gentlemen. Do you think that any man could conscientiously say that his opinion was not changed after hearing this evidence about the intelligence of the accused ? For my part, gentlemen, it is beyond me. I cannot conceive it. Remember that since Dr. Bucke gave his evidence on half the case we have got this wonderful evidence from McGinnis, we have evidence

that this prisoner had proposed to McGinnis to shoot Simpson, and that McGinnis should prove an *alibi*. Now, as that was additional to the evidence which was in when Dr. Bucke was first examined, I put the question straight to him: "Dr. Bucke, what idea does it convey to your mind when one man proposes to another that he will shoot so and so, if he will prove an *alibi*? Does that mean murder?" Do you think he meant murder by that?" and what was his answer? "I think he had a suspicion of murder." Do not you see, gentlemen, that that is trifling with the truth. Would any man, who would wish to come forward and give you the information that you are entitled to receive, trifle with the truth by saying, "I think he had a suspicion of murder." Why didn't he say at once, "Yes, if Shortis proposed to McGinnis to shoot Simpson, if McGinnis would prove an *alibi*, I think that meant murder." We know it means murder, and only murder. And why does Dr. Bucke talk about "suspicion, suspicion, suspicion?" Then I asked him, "Does it suggest murder to your mind when he wanted to have an *alibi* proved, so that he might not be detected, and so that he could escape punishment," he answered, "Yes, if he committed it." Then, gentlemen, does not that show that the prisoner knew what murder was? Does not it show that he knew what it meant to take life? Does it not show that he knew he would be punished, and that he knew he was doing wrong? Does not it show that he knew it was a breach of the law of the land, when he took the means to avoid the punishment of the law? Where does the evidence of the experts stand that this man did not know the difference between right and wrong, and did not know the quality of his acts against the prisoner's own conduct, which shows that he knew what murder is, that he knew murder was a crime, and that he knew it was punishable? If anything else will put the doctor's evidence out of sight, it is this statement of the prisoner himself, which is well established by McGinnis.

Now, gentlemen of the jury, I come to the tragedy itself. You know that the prisoner came to the mill office about ten

o'clock on the night of the 1st of March, armed with one pistol, and with a huge chisel. An attempt has been made here to suggest that this chisel was going to be used at the Anderson's house to take the heels off a pair of skating boots, in order to make them fit the skates better. The chisel, however, was not left at the Anderson house. If young Shortis brought it to the Anderson house to take the heels off the boots, and if his headache was too great to prevent him from trying the operation, that headache about which there is so much question, and which he said nothing about when he got over to the mill five minutes afterwards, if his headache was so bad as to prevent him from taking the heels off the boots that night, is it not a remarkable thing that he did not leave this enormous chisel at the Andersons' ? (Counsel exhibited the chisel to the jury.) He left the skates there, and is it not remarkable that after carrying this huge and dangerous arm in his overcoat pocket he did not leave it there ? But he did not, and the story is, that that afternoon Miss Anderson required something taken off her boot, and the prisoner wanted the heel on his own boot lowered, and that there was a small screwdriver produced, which would not do, and that he brought this chisel in the evening to take the heel off. Gentlemen, this is a mortising chisel. You know what it is used for ; it is used with a mallet for mortising. It is an old country tool, and a useful, keen edged tool. It is rather an extraordinary thing that any man would take that tool, and attempt to take the heels off a pair of boots with it. All skating boots have iron nails in the heel. Now, how would you go to work with that chisel to take a portion of the heel off the boot ? In the first place, you would injure the chisel on the nails, and in the second place, if you did get the heel off, you would still be in a difficulty, because you would have to file the nails, or to drive them in, and the nails, if driven in, would go up in the inside of the boots, and you would be in a worse difficulty than in the first instance. So instead of taking them to a shoemaker, where they had been before to get the bottoms taken off, this young man, we are seriously told, took this chisel over to Anderson's, to take

a portion of the heels off the boots. Now, gentlemen, I ask you if you do not consider that this story should be put where a number of other stories in this case are put? Whatever degree of credence you may give to it, you will find the fact that this young man turns up at the mill with this arm, and the pistol, in his pocket. My learned friend said that it was a mere toy pistol, and would scarcely kill a cat, if I understood him right.

MR. ST. PIERRE, Q.C.—Yes, but I did not say that exactly. I stated that the pistol was of twenty-two calibre; that this pistol was unlikely to kill a man; that, if there was any predisposition in his mind to kill when he left his room, he would certainly have taken a more deadly weapon than this.

MR. MACMASTER, Q.C.—Well, now, gentlemen, what is the proof before you? I will deal with the question how efficiently he was armed, in a moment.

MR. ST. PIERRE, Q.C.—I said there was no proof that this chisel ever came from him.

MR. MACMASTER, Q.C.—It was taken out of his pocket.

MR. ST. PIERRE, Q.C.—There is no proof that it was brought with him, because it would have shown when his coat was taken off and thrown on the counter.

MR. MACMASTER, Q.C.—That may be, but at all events that chisel was found in his coat pocket, inside of his clothes, that night, after the murders. I do not wish to strain the argument beyond the facts. Well, now, gentlemen, you have it proved that two shots from that pistol were fired into the body of Lebœuf. You have it proved that one shot from that pistol was fired into young Wilson, entered the right side of his body above the shoulder, and came out on the opposite side below the heart, traversing his body some eighteen inches. What saved the boy? Had that bullet touched his heart would he have been here to-day, or would not the people of Valleyfield have had to mourn three deaths instead of two? You can see yourselves, when that pistol had the capacity to send a bullet through his body from the top of the shoulder to the lower left side, that it was a dangerous weapon.

MR. ST. PIERRE, Q.C.—There is proof that the wound was produced, but not by the small weapon. The only proof that the small weapon was used was that a bullet fitting it was—where? On the floor, not in the bed; if it had been found in the bed, it might have been different; but it was found on the floor, and there is no proof that the wound which was inflicted was inflicted by that small weapon.

MR. MACMASTER, Q.C.—My recollection is this: that the small bullet came out of his inside shirt, and dropped on the floor when they were taking his (Wilson's) clothes off the next morning, and the small bullet undoubtedly belonged to the small pistol. Now, he came to the office and you know perfectly well that he spoke about robbing the office to Mac-Vicar. He did not speak about robbing it himself, but how easily it could be done. He comes in, goes up to the table, takes up the office pistol—the thirty-two calibre pistol—he knew there was a pistol there). The same drawer that the pistol was in was full of cartridges of both kinds, cartridges for the small and the big pistol. He enters into conversation with these young men. He then takes this large pistol, saying he wants to look at it. First, Lowe takes the charge out of it, and gives it to the prisoner, who looks at it for quite a while, and then oils it. Then he returns it to Lowe, and Lowe loads it again. Then Shortis wants to see it again, he wants the name of the maker, and Lowe holds it and gives him the name of the maker. Lowe puts it loaded in the drawer where the cartridges are, and proceeds with the process of putting the money in the safe. Now, do you understand well that the place where Smith's desk was, and where Shortis stood when he commenced the attack, was at such a point that standing there, he (Shortis) had command of the whole room. There was Lowe, and there was Arthur Lebœuf—here you have young Wilson near the low part of the counter—there was Loye near the high part. Maxime Lebœuf in the meantime was out of the room on his rounds. Now, standing here, when he came over from the drawer, over which there was a good light, and where he might have

looked at the model number when he took the revolver out of the drawer the second time, Lowe asked him what he was doing with it, and he said he wanted the model number. He had had it long enough before to get the model number ; he was oiling it for quite a while, he had it for an hour, and if he simply wanted the model number, why, when he took it out of the drawer (did he not use the light that was right over the drawer) and look at the model number there? That would not have been a strategical position ; so he goes back to his original position at Smith's desk. There he sees Loye with the high counter behind him, and there he sees Wilson with the low counter, three feet high behind him, and there were Lowe and Arthur Leboeuf on the next side to the vault. What does he do when he gets back to his position? He pulls the revolver apart. Why? To see whether it was in working order or not, to see if it was sufficiently loaded or not. When he got it and went back to Smith's desk, the position was this: here was this man with an enormous chisel in his coat, or under his clothing, with a four-barrelled revolver loaded, and a five-chamber revolver loaded. Taking it apart, he could easily see whether Lowe had properly loaded it or not, and then in that position he immediately commences action. What does he do? He does not fire at Loye first, for if he fired at Loye there, the chances are that Wilson would have jumped over the low place in the counter and escaped. But immediately after taking the large revolver apart, and seeing that it was properly loaded, he fired at Wilson like a flash, and the bullet strikes him. Wilson raises a cry, and Lowe runs up to catch him. Well, now, Mr. Greenshields calls attention to that, and says that they must have regarded it as an accident. It is possible that they did. It is impossible to conceive that these four young men, who were friends of the prisoner, thought this was a deadly assault on their lives. But their minds were soon disabused of such an impression. Dr. Bucke admitted to me that the prisoner had consciousness when the first shot went off, but thought that it was an accident. There is no

evidence it was an accident, but there is that it was not. Well, now, gentlemen, after he fired at young Wilson, like a flash—as poor Loye made a race by to get to the telephone, possibly thinking it was an accident—like a flash the prisoner turned upon the others, and said, “Don’t move, or I will shoot you,” to Wilson and Lowe, Lowe having gone up to take hold of Wilson ; and then immediately, with perfect design, the prisoner turns around and shoots and kills Loye in the telephone box ; after that, he turns back and shoots at Lowe and Wilson, standing together, and then Lowe jumps under the table, grasps the money from the table, and goes into the safe, whither Arthur Lebœuf had just preceded him. Lowe was fired upon in his transit to the safe, but the bullet missed him. Then this poor boy Wilson, who was stunned, and almost shot unto death—because the bullet went into his face, and narrowly escaped his brain, passed down, striking his teeth, breaking four of them out, and dividing into two parts, one part going into the tongue and the other part passing out of the inside of the face—this poor boy is standing alone. He pleads with the prisoner not to shoot again, and moves in this direction ; but seeing that Wilson is moving in the direction of the telephone, the prisoner fires at him there and misses him, and then, as he goes back, fires at him again. In the meanwhile, no doubt, Maxime Lebœuf, while making his rounds, heard these shots ; he comes around to the office entrance. What does the prisoner do ? He calls out, “Maxime, Maxime ! come here !” and poor Maxime opens the door, invited by a friendly voice. He might not have gone in, if it had been the hostile voice of a burglar ; but hearing a friendly voice, and knowing it was Shortis’s voice, he goes in, and goes to his death—for he is immediately shot, and falls to the floor, though, no doubt, not wounded fatally then. Young Wilson, in the meantime, runs around to the door of Mr. Simpson’s room. The prisoner, after having disposed of Lebœuf, follows Wilson into Simpson’s office, to put him out of the way. He kicks in the door : there is evidence of a struggle—a bone in the young boy’s neck is broken—there is evidence of his

having been throttled, and, after some sort of a fight there, poor young Wilson gets away from him, runs along the hall, sees a form or some sort of shadow in the passage, supposed by him to be the body of Maxime Lebœuf, crawling along the floor. Wilson passed through the door leading into the weave-room. Just as he passed into the weave-room, a shot is fired at him ; it misses him. He goes into the weave-room and falls prostrate on the floor, after he is ten feet in. Then the prisoner returns to Maxime Lebœuf, and Wilson hears pistol shots, and sounds of a struggle going on in the passage where Maxime Lebœuf was. Next, the prisoner returns with a lantern—Maxime's lantern—and goes up, like a sleuth-hound, with his pistol in his hand, and stands over the body of that unfortunate boy, and fires a shot into his body as he is lying prostrate on the ground. Gentlemen, in warfare there is honour among the greatest enemies, and, whether it be a whole consciousness, or whether it be a half consciousness, it certainly is the consciousness of the devil, that could have prompted the fiendish act of firing that pistol shot into poor young Wilson's body, while lying on the floor. If the first shot was a mistake, why in the name of everything that is sacred, and in the name of common sense, did not he say it was a mistake? There is no proof that it was a mistake—but take it on his own statement now. Why did not he say it was an accident, ; why did not he say at once, "It is an accident," and everyone of those persons there would have said, "Well, he was handling a revolver, and a terrible mistake occurred, but he was not to blame, if it was a mistake." That was his course, and that was the course of an innocent man, but the excuse made by him, through the doctors, is this, that he thought he was in the power of Simpson, which Dr. Clarke, of Kingston, interpreted to mean that he would be prosecuted before the law. Ah! gentlemen, if it was a mistake, he need have had no fear of prosecution. If it was a mistake, his friends and companions would have explained that it was a pure accident. But, gentlemen, the very fact, that he says he felt he was in the power of

Simpson, shows that he thought he had fired, and would be prosecuted for it, and taking his own version of it, what does it amount to? To this: "I have put myself in Simpson's power; now, I must proceed to exterminate the witnesses of the crime, and kill everyone." I am leaving out the vulgar idea of stealing money. The impulse came on him, and what was it, to blot out every person in that place, so that there would be no one to give evidence against him? He was capable of that, because a few weeks before, he had proposed that he would shoot Simpson, if McGinnis would swear he was in another place. Obliterate the witnesses. That is the rational consequence of the theory that has been set up by the Defence. If it was an accident, why did not he say it was an accident? That was the course of innocence and truth, and the confession that he felt himself in the power of Simpson was this: he said, "I fear that I shall be prosecuted now, and I must go ahead and slaughter every witness to the crime." Well, gentlemen, it is for you to weigh that, and it is for you to measure that. What do we find, gentlemen? He returns to the safe after shooting Wilson. He returns through the halls to the safe, and holds a conversation with Lowe from the inside. He wants Lowe to open the safe. Lowe tells him they are locked in, and cannot open the safe. The prisoner asks for the combination, Lowe pretends to give it to him; he tries to work the combination, they had given him the wrong combination, and he locks the safe instead of opening it. Why was he trying to get the men out of the safe? The money was in that safe then. And when Lowe said: "For God's sake go away, you have done enough for one night," he goes to the front door, opens the door, making a pretence of going out, closes it with a slam, and then comes back on tiptoe to the safe—always the safe—always the safe—never very long away. He must sentinel the safe. There stood between him and fourteen thousand dollars only the two men in the safe, and if the safe had been opened, armed as he was to the teeth, with the chisel and these two

revolvers that were taken from him loaded, these men's lives would not have been worth a minute's thought.

Now, what do you think of his destroying the telephone? What do you think that was done for? Have you made up your minds about that, gentlemen? Maxime Lebœuf was seen crawling along the passage. He was shot near the passage, he was found at the bottom of the stairway, with braces tied around him. He had been carried or dragged down the steps. What do you think that was for? When Dr. Sutherland and Napoleon Delisle came along, there was no body in the way. It had been removed from the passage where it had fallen, so that if anyone had come along the passage, there would be no body to obstruct the course, and to give notice of the conflict and death, while Shortis was sitting in the office armed. Nothing to give them a note of warning, because the body of Maxime Lebœuf was carefully carried down to the foot of the stairway; and when Dr. Sutherland and Delisle came along, they did not see the body of Maxime Lebœuf. Now, gentlemen, it is said that he remained in the office, waiting for the police! Waiting for the police, gentlemen! In a small town like Valleyfield, do you imagine that there is a policeman at every corner? How were the police to know that he was there? The people of that quiet town were in their beds at eleven or twelve o'clock at night. If he wanted the police, if he had the consciousness that he was remaining there waiting for the police, and he knew there were only two or three policemen in town, why did he not go forth from the office when he regained consciousness? Why did he not go to the Mayor? Why did he not go to Poirier, the constable? Why did he not go to Dr. Sutherland, his medical adviser, or some leading citizen of Valleyfield, and say: "A terrible thing has happened this night, and I have made a frightful mistake?" But, gentlemen, he was not waiting for the police, and did not expect them. He had every reason to believe that young Wilson was dead. He went into the weave-room a second time, and did not see him. He took matches

and lighted them, and held them over his own head. This poor boy was lying behind a bench ; he had not the strength to move, and it is well he could not, but he heard the prisoner cry out, " Wilson, for God's sake Hughie, where are you ? " No answer from Wilson. But no, he had shot him twice, once in the face, and once again through the body. He had reason to think that Wilson could not be far away, and must be lying down in his own gore, dead. At all events, he must have supposed that he could not get out of that large room, and that he was dead. But there is no time to wait there bothering with Wilson, it was, " the safe, the safe, the safe," because the money, and the two men guarding it, were in the safe. Gentlemen, the outstretched hand of Providence raised that young man Wilson, and enabled him to crawl along the passages to get down to where the firemen were—a long distance, nearly three hundred yards—and then from that, the alarm was sent to Dr. Sutherland and others. Dr. Sutherland who came first, like a brave man, thinking he might be of some assistance to those wounded in the office—and Napoleon Delisle, with cool courage—knowing that they were going to fight with a monster armed to the teeth, proceeded on their way to the office, one armed with a piece of zinc, and the other with a piece of heavy pipe. They started off, followed the dark passages, and came gradually up to the office door. Lowe and Arthur Lebœuf heard the sounds, and shouted to them, and they came up to the door, and one stood on each side of it, on the outer side—the dark side. The prisoner then started from the safe, and came along the passage with a pistol ; it is true it was in his left hand, the other pistol was under his shirt, or tied around his neck. He may not have expected to meet them there, or so soon, but just as he appeared,—came near the door, outside which stood two brave men—Dr. Sutherland shouted " hands up," and the strong arm of Napoleon Delisle caught the prisoner around the body. Two rude, but effective improvised weapons were levelled, and awaited his response. His hands went up, and he said " I give up my pistol, I do not know why I killed those men."

Gentlemen, there is a time in the career of every criminal and every prisoner, when he recognizes that he is overpowered by superior force. The splendid moral courage of these two men, who went forward at the risk of their lives, does them infinite credit. As Napoleon said, "in war, even, the moral is to the physical as ten is to one." I have no doubt the superb *morale* of Dr. Sutherland and Napoleon Delisle overcame Shortis, and he readily succumbed when he saw the game was up. He saw two men—he did not know how many more might come—the game was up. "Why didn't he run away?" said one of the Counsel for the defence? Where could he run to in all this broad land, or in the neighboring country, and escape punishment, with an extradition treaty between Canada and the United States, and two witnesses in the safe to attest his crime? It was the very worst thing he could do. The only thing was to get the safe open, secure the money, and make off with it. If he killed these men, there was not a single witness. Look how nearly he succeeded; Wilson was as good as dead—two men were dead within two or three minutes of each other. If he could have killed these two men in the safe, he could have filled the pockets of his big overcoat; he had this chisel to open the drawers if necessary, and could have put this money in the enormous coat he had, for we have proof that the bills were of the denominations of five dollars and ten dollars, and a package was on the table of one hundred of five dollar denomination, and one hundred of ten dollar denomination, making fifteen hundred dollars. It would not have been a difficult matter for him to have taken at least some ten thousand dollars in the large overcoat he had on that night. Ah! but had he accomplices? Where would he go with the money, or what would he do with it? In answer to that I would say, who would suspect him? No one saw him go there; nobody to this day has come forward to say that he saw Shortis cross the street and go in there. He was safe—Jack Anderson and he had surveyed the country well over, when they went out. He was safe. If he, in the depth of the night, at two, three, or four o'clock in

the morning, had got out of that office with that money, and fired the building, who ever would have suspected Valentine Shortis? No one. Well, now, gentlemen, we have him just on the morning of the homicide. He gives his pistol to Dr. Sutherland; that was a piece of deceit, he had the other pistol then under his clothes. Still the criminal; still the criminal. If he did not know why he had killed these men, if he had done it in a fit of frenzy or anything of that kind, and had come to consciousness, why didn't he deliver up both pistols? Then Smith comes to him, and asks him if it was he who did this, and he looks up defiantly, and says: "Yes, it was; shoot me, shoot me." What does that mean? Is not that conscience's recognition of wrong doing? Did not he feel that he had offended the law, and that life was due for life? He had only one to give against the two or three taken, but did not he feel that he had broken the laws of his country and forfeited his life? Did not he have contrition? Mr. Smith tells us that the prisoner also said, "Give me a revolver and I will shoot myself." He had a revolver all the time, and he had one at that time. He did not want to shoot himself, until after his capture. Why did not he shoot himself five minutes before Dr. Sutherland came? He was sentinelting the safe, the work was not done, it was not time to leave, it was better to stay. He was watching the safe. It was his best policy to stay, because, if he had gone, it would have been an acknowledgment of guilt,—the two witnesses were in the safe; if he stayed, they might be suffocating and have to come out, and then he would get the money. Why, gentlemen of the jury, when he was sitting there on a chair that morning, if it was a mistake why did he not say to Dr. Sutherland, to Smith, to all, to all the friends about him, "Oh! this was a terrible mistake; I was oiling the revolver, I took it up and pointed it at young Wilson, and it went off; it was a mistake, and I got so excited afterwards I could not control myself." Why did not he say it was a mistake? He did not say it then or before. Why did not he, when he met the *Herald* reporter, Mr. Burgess, the next

morning, say it was a mistake, a terrible mistake, as an innocent man would have said? But he said, "I do not care to say anything at all, until I have consulted my legal adviser." Now, he did not have the benefit of my learned friend, Mr. St. Pierre's advice that morning—that was the second of March and Mr. St. Pierre did not arrive on the scene till the fourth, so this man was not a fool by half. When he was in the post-office difficulty he said, "I will go and see my lawyer," and when he was taken red-handed from the scene of death he said, "I have no explanation to make, until I see my lawyer." When the doctor goes to examine him in the jail he said, "Oh! do not think me rude, but I must decline to be examined. I am advised by my legal advisers not to allow myself to be examined." Now, gentlemen, taking that as a summary of the evidence-in-chief, I ask you now what does the case for the Crown present? The case for the Crown presents clear and unmistakable proof that the prisoner killed John Loye. Is it excusable? What do you find, gentlemen of the jury, to excuse him? Do you find that this man was insane, or do you find that he acted intelligently? Do you find that he acted with premeditation, malice, design, and thought, or is his killing the mere indiscriminate killing of a man that is caught with a sudden frenzy, and without any motive whatever? You must remember that the law always presumes sanity until the contrary is proved. The first deduction, gentlemen of the jury, that I will make for you from the evidence submitted on behalf of the Crown is this: The Crown's evidence in rebuttal shows clearly that at the time of the murder and before it, the prisoner was a young man of intelligence, education, and manners, beyond his years, and that he was in his normal state of mind, with no indication of insanity, at the time he commenced the attack. That is the proof; that is the proof, too, of his condition of mind immediately after the murder, and later on next morning after the murder. That is the proof on the night of the tragedy offered by all the young men that were there, who saw him later than Miss Anderson did. That is the proof for months

before, while he was in Valleyfield. There is a clear and unbroken chain of evidence of his intelligence and education, and absence of any indication whatever of insanity. That is the first point.

Now, the second deduction I make from the evidence is this. There is evidence that he meditated the robbery. There is evidence that he had a double motive, revenge on Simpson, and desire to get the money. There is evidence that the tragedy was executed with that motive and design, and these go to repel the idea that it was a mere sudden outbreak of temper or frenzy. There is evidence that he was in desperate circumstances, because he was four months in arrears for his board at his hotel. He had some little bills that he owed, but he did not commit the murder for them alone. There is evidence that he was getting small pittances from home, as for instance, the one pound, and three pounds ten shillings post-office orders. There is evidence that he was in love with Miss Anderson. It is a fair inference from the correspondence between them and the evidence, that they contemplated marriage, and this may be another illustration of the desperate lengths to which a man will go for a woman. The French have a proverb, "In difficulties that seem insolvable, *cherchez la femme*." You may have to do it here, gentlemen. It may be that to accomplish the desires that were near and dear to his heart, he resolved to enrich himself in this way. It does not follow because his father was a rich man, and worth very much more than one hundred thousand dollars—a fact that I did not see the necessity of flaunting before the Court and jury—that the son was incapable of committing a crime. It may be that though his father was a rich man, he still was very niggardly with him. There is no evidence of any great expenditure on this young man in Canada. There is evidence that he was in close straits, although he was a sober young man. There is evidence, in addition to this, that he stated himself that he would clean out Mr. Simpson and his clerks, shortly before the cleaning out was attempted. Then, in addition to that, there is the clearest evidence before

you that he knew the nature of the crime he was committing, that he knew it was murder, and that he knew murder was punishable. There is the unmistakable evidence of McGinnis on that point. There is the evidence of his statement to Jack Anderson and Poirier together, that if Bob went against him and Jack, it would be bad for them. There is evidence that he knew what a breach of the law was, because he pleaded guilty to carrying a revolver. He knew what the law was, for he applied for a license to carry a revolver. There is evidence that he was desirous of knowing what the law was, because he discussed the question of the hotelkeeper's liability with Mr. Simpson, and there is evidence that he knew he was liable to punishment for the post-office fraud, because he asked Mr. Brophy not to explain the real character of the transaction to Mr. Hatchett.

Now, gentlemen of the jury, I have gone over the whole case as carefully and as impartially as I am able. How far you may be able to agree with me I do not know. You have a duty to perform, gentlemen, just as I have a duty to perform, just as my learned friends have a duty to perform, and just as His Lordship, who presides over this most important case, has a duty to perform. As public prosecutor, I do not ask you to find this man guilty unless you honestly, and in your consciences, feel that he knew what he was about on that night, and that he knew he was breaking the law. That is as plain as it is possible for me to put it to you in words. I am not pleading for a verdict from you. You will apply your own good understandings to the case ; and if you are convinced that this man is not responsible before the law, as it will be explained to you—and you have some idea now of what constitutes responsibility—why then release him. But if, on the other hand, gentlemen, you think he is guilty of murder, you must find the fact. Do not be under any misapprehension. My learned friend, Mr. Greenshields, told you there were only two possible verdicts, one was “guilty of murder,” and the other was “not guilty of murder, on the ground of insanity ;” and my learned friend proceeded to tell you what the consequence

of the latter verdict would be, namely, that Shortis would be kept in custody during the pleasure of the Lieutenant-Governor, which, in this case, he said, would mean for life. I do not wish to refer to that remark further than to say this to you, gentlemen, that imprisonment during the Lieutenant-Governor's pleasure does not necessarily mean for life. It means during the pleasure of the Lieutenant-Governor, and if his Counsel chose to advise him at any time that the prisoner should be released, then the custody would be for a shorter period than life. The other verdict, as Mr. Greenshields truly told you, is "murder"—the highest crime known to the law. My learned friend invited you to go to the scaffold of this unfortunate man if you found the fact of murder against him, and to attend the funeral obsequies. Let me tell you, gentlemen, that you are not bound to accept that invitation. You have nothing to do with the scaffold. You are not erecting his scaffold. If he is condemned, he has erected his own scaffold. You are only performing your part of duty, if you condemn him for sufficient cause. You are here representing public justice. If you find the fact that he is guilty, His Honor will pronounce the sentence which the laws of your country impose. The responsibility is divided between you. Then, after that, whether he is executed, or whether he is kept for a period in the asylum, or whatever may happen, is regulated by the laws of your country, and is a matter altogether outside of your functions. You have nothing to do with that. Let me tell you, gentlemen of the jury, you must be very careful to remember, in coming to your conclusion, that what you have to think of is public justice, that the law may be properly administered, that the prisoner should get an absolutely fair trial, and that your verdict will inspire respect for law and order. You are not there to consider the terrible grief that has come over Mr. and Mrs. Shortis. You are there to do your duty as men, bound and sworn to bring in a verdict according to the evidence, without regard to the feelings of anyone. For, gentlemen, if you allow sympathy to sway you from the path

of duty, how would you distribute your sympathy? You must feel for this unfortunate gentleman and his unfortunate wife, the grief-stricken parents of the prisoner, whose hearts must bleed for their son's unhappy condition. Everyone in this Court House, everyone in this country and in Ireland, must feel sympathy for them; but, gentlemen, do not you see that if your hearts are carried away, and if your heads are unmanned, and if you are asked to go aside from the straight path of duty—the sworn path of duty—for the sake of Mr. and Mrs. Shortis, you might equally be asked to think of those who are dead and gone, never to return, and to extend your sympathy to the father and mother of that bright boy, who was their great hope and joy, who was stricken down on the threshold of manhood, without one moment to make his reckoning with his God? Think not of him, for, if you do,

“ His virtues

Will plead like angels, trumpet-tongued, against

The deep damnation of his taking off.”

Think not of them. And think not of the sorrowing widow and fatherless children in that humble Valleyfield home, of her who has lost for ever the support and succor of her husband, or of the children who can never know how great their loss is. No more will the orphan children of Maxime Lebœuf feel the gentle caress of their father's strong hand. Think not of the sadness in that humble home. Put that aside, gentlemen—you have nothing to do with it. Put the case of Mr. and Mrs. Shortis aside—you have nothing to do with that. Let the law be truly and honestly administered above every consideration. Be firm. Be strong. Be just. Your only duty is to find the fact,—is the accused guilty, and if so, is he to be excused on account of human infirmity? Mercifully spare him, if the compass of life,—God-given understanding,—was absent. Justly condemn him, if he maliciously slew his fellow men. Remember, gentlemen, that the jury system is the safeguard of the liberties we enjoy under the criminal law; and I tell you that it cannot be successfully and efficiently administered in any

country except by men possessing the genius for justice, the strong, practical sense, and the love of liberty, of the great people that created and maintained it. Therefore, gentlemen, whatever your verdict may be, let it be a verdict according to justice, a verdict according to your consciences, and a verdict in accord with the evidence. Perform that duty honestly and faithfully as men, and you can leave those who mourn in Valleyfield, and those who mourn in Ireland, out of your present consideration. Leave them to the succour and comfort of another Power, leave them to the God of infinite justice, of infinite mercy, and infinite truth—to that God “who bindeth up the broken hearted, and comforteth those that mourn.”

23rd Day of Trial—October 28th, 1895.

MR. MACMASTER'S ARGUMENT UPON THE POINTS OF LAW
RAISED BY MR. ST. PIERRE, Q.C.

D. MACMASTER, Q.C.—I beg to say, with regard to the law that should govern in this case, that it is not being tried under the law of the State of New York. For my part I do not know what that law is. It is not being tried under the law of the State of Maine, or under the law of the State of Virginia, nor yet under the law of France or Germany, and many of the authorities referred to by my learned friend, although interesting from an academic standpoint, have little or no weight as authority. Under the law of France there is a special article in their Penal Code, making provision for madness and delusion being a defence. Our law, in my view, does not make like provision. The law we have to be governed by is the law contained in Article 11 of the Criminal Code, which is as follows:—"No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission." And the provision hereinafter contained in section 736 of our Criminal Code, and then the third provision of section 11 is: "That everyone shall be presumed to be sane at the time of doing or omitting to do any act, until the contrary is proved."

Now, the first proposition that I will submit to Your Honour in reply to my learned friend is this: that the provisions of the Code must be construed as a Statute. It does not matter whether we call it a Code or a Statute, the words must be interpreted by themselves. I do not think it is necessary to cite any authority upon that point, but there are two leading cases, and one is the case of Vagliano and the

Bank of England, and the other is the case of Robinson against the Canadian Pacific Railway. In the former case Lord Herschell stated—in the latter case, the case of Robinson and the C.P.R., the Judge who delivered the judgment followed Lord Herschell and adhered to the same view—that it was immaterial whether it was a Statute or Code, we must be governed by the words in order to ascertain the intentions of the legislature. I can give Your Honour the exact reference to these cases. I was citing them from memory. Robinson and the C.P.R. is in L.R. 12 Appeal Cases, 1892, at page 487. The case of Vagliano and the Bank of England is in Law Reports Appeal Cases, 1891, page 145. These are the highest authorities. Now, I will not trouble Your Honour with anything more about that.

Now with regard to the meaning of this section of the Statute in relation to insanity; Your Honour asked the question of the learned Counsel—I am not prepared to say that there is any very material difference between the law as put down in this Code, and the law as put down in the answer of the Judges to the House of Lords in the Macnaughton case (4 Wallis, State Trials, New Series, p. 847), but there is this about the Code, there is special provision in respect of delusions of a particular kind, namely, specific delusions, and these are the only delusions provided for, and therefore upon principle where specific delusions are provided for the others are excluded. *Expressio unius est exclusio alterius*. Only the delusions that are referred to here are such as could be recognized under our law. Now what are they? The only delusions that could be recognized under the provisions of the Statute would be such a delusion as, if it was a reality, would justify the prisoner in taking the life of the man he killed.

BY THE COURT.—The Defence has admitted that paragraph of the Section has no application to this.

MR. MACMASTER, Q.C.—The precise words are: “Unless the delusions caused him to believe in the existence of some

state of things, which, if it existed, would justify or excuse his act or omission."

The next question is as to the burden of proof, and upon that I do not see how there can be any doubt, for the Statute says : " Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved." Therefore the prisoner here is presumed to be sane, until the Defence completely removes the presumption of law, and establishes to the satisfaction of the jury, and, I submit, beyond a reasonable doubt, that the prisoner was not capable, in the words of the Statute here, of understanding the nature and quality of the act, and of knowing that his act was wrong, that is, contrary to the law.

Now, it is rather important that there should be no doubt about that, for in an ordinary criminal case the whole burden is on the prosecutor ; here the burden is shifted, and unless the jury can find clearly and to their satisfaction that the man was so insane as not to know what he was doing, not to know the nature of his act, not to know it was against the law, I submit, as a proposition of law, they must convict the prisoner.

Harris, at page 22, Criminal Law, says :

" The law presumes sanity, and therefore the burden of the proof of insanity lies on the defence. Even in the case of an acknowledged lunatic, the offence is presumed to have been committed in a lucid interval unless the contrary be shown. It is for the petty jury to decide whether a case of insanity, recognized as such by the law, has been made out."

MR. ST. PIERRE, Q.C.—It is for the petty jury to decide.

MR. MACMASTER, Q.C. — Yes, unquestionably. The Judge instructs the jury as to what the law is, and upon whom the burden of proof is, and with that instruction of course it is for the petty jury to weigh all the facts and circumstances, and to take the law from the Court.

In the same way Roscoe says at page 945 :—

" To amount to a complete bar of punishment, either at the time of committing the offence, or of the trial, the

insanity must have been of such a kind as entirely to deprive the prisoner of the use of reason, as applied to the act in question, and of the knowledge that he was doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong in his own case, and to know that he was doing wrong in the act which he committed, he is liable to the full punishment of his criminal acts.

The onus of proving the defence of insanity, or, in the case of lunacy, of showing that the offence was committed when the prisoner was in a state of lunacy, lies upon the prisoner; and for this purpose the opinion of a person possessing medical skill is admissible. The insanity may also be inferred from the behaviour of the accused and other facts in the evidence."

Now, may it please the Court, in estimating whether the act was committed from insanity or from some other motive, Roscoe says at page 948:—

"It has been justly observed that the plea of insanity must be received with much more diffidence in cases proceeding from the desire of gain, as theft, swindling, or forgery, which generally require some art and skill for their completion."

Archibald says the same thing with regard to the burden of proof, and with regard to the motive, and I do not think I will take up Your Honour's time with much more on that subject, particularly as my learned friend (Mr. Laurendeau) is going to refer to Russell on Crimes.

I call Your Honour's attention to the section that was read by Your Honour from Taylor the other day, during the discussion with regard to the burden of proof in insanity cases; it is the section on pages 215 and 216 of the first volume of Taylor on Evidence:—It concludes in this way: "In like manner every man is presumed to be of sane mind until the contrary is shewn; but if any derangement or imbecility is proved or admitted at any particular period, it is presumed to continue till disproved, unless it is obviously of a partial or temporary character."

Now, lest there should be any misapprehension about what is stated there, lest it might be inferred or argued that the proof of the existence of imbecility with regard to the prisoner changed the burden of the proof, I intend to call Your Honour's attention to this distinction : The second portion of that paragraph is not a distinction that is applicable to the criminal law ; it is only applicable in the civil law ; and the examination of the authorities will show that. In the first place, it would be impossible that the second portion of that paragraph could be applicable in a criminal case, especially when we have an article in the Criminal Code which says in express terms, "Every one shall be presumed to be sane at the time of doing or omitting to do any act, until the contrary is proved." In the face of an express provision of that kind, it would not matter what the previous derangement was ; it would not matter what was the previous finding against him in respect of insanity. It would equally throw the burden of proof on the person charged, as Mr. Harris says ; and even if the person had been a lunatic, and adjudged a lunatic, it would be assumed that he committed the act in a lucid interval, and therefore the burden of proof would be still on the Defence.

Mr. St. Pierre recognized that the other day, recognized the rule of the Code ; but as this section of Taylor was referred to, I feel it my duty to call Your Honour's attention to the fact that that does not refer to the criminal law but to the civil law.

I take occasion to refer to the authorities on that subject, and I cite two of them now ; and Your Honour will see that they refer to the soundness or unsoundness of a man's mind in respect of "testamentary capacity," under the civil law, and that this is distinct from the standard of the criminal law.

In one of the cases referred to, the case of the Queen against Oxford, which is reported in 4 Wallis, State Trials, new series, 498, and which I have before me, Lord Denman says, "Persons must be taken to be of sound mind till the contrary is shown. But a person may commit a criminal act,

and not be responsible. If some controlling disease was in truth the acting power within him, which he could not resist, then he will not be responsible. It is not more important than difficult to lay down the rule . . . On the part of the Defence it is contended that the prisoner was *non compos mentis*, that is, (as it has been said) unable to distinguish right from wrong, or, in other words, that from the effect of a diseased mind he did not know at the time that the act he did was wrong . . . Something has been said about the power to contract and to make a will. But I think that those things do not supply any test."

And when we come to refer to the power to contract and to make a will, when we look at the full report, we find that the report itself distinguishes between the civil case and the criminal case. Now I take up Taylor on Evidence, and I refer to some of the authorities cited there, which I will do very briefly. The first case is the case of Smith and Tabbitt, that is reported in L. R., 1st, Probate and Divorce cases; page 396. The controversy there is about a will. It is a matter of the civil law, and Sir J. P. Wilde, in delivering the judgment, said, "It is not uncommon, in speaking of cases like the present, to say that the question to be solved is, whether the testatrix was 'mad.' But the question raised by the pleadings is whether the testatrix was of 'sound and disposing mind, memory and understanding' at the time she made her will, and the legal meaning of these terms is a definite and limited one, *having no relation to any other subject than that of testamentary capacity*. They have received judicial exposition in terms sufficiently clear, and at the hands of authority sufficiently high. *I forbear, therefore, to discuss 'madness' either in its popular acceptance or its legal aspect in relation to other matters, such as immunity in the commission of crime, discharge from the obligation of contract, restraint in the management of property.*"

So that Your Honour will perceive that the very Judge, who delivered the judgment for the Court in the case relied upon by Taylor, makes the distinction clearly that the shifting of the

burden of proof is in respect of civil matters, and that he entirely disavows the idea of interfering with the application of the rule as to the burden of proof in respect to the commission of crime.

BY THE COURT.—I never understood that it would throw the burden of proof on the Crown, but does your opinion go so far as to say that the previous acts of the accused cannot be taken into consideration by the jury to declare that at the time of committing the crime he was insane?

MR. MACMASTER, Q.C.—No. My opinion does not go that far, but I think that the jury should take into account the acts of the prisoner in reasonable proximity to the date of the commission of the act complained of, and I think, notwithstanding Your Honour's ruling, that it would be competent to look at some of the acts immediately following the crime, just in the immediate neighbourhood, to show that the man was intelligent and educated, in order to repel the proof made on behalf of the Defence that he was insane. Although many previous acts may be looked at, they have to be looked at relatively. A boy may have been stupid in his youth. Some of the best soldiers that have ever served in the army were the boys that would not study at school, A dunce at the bottom of the school-class has often become the statesman; and therefore we must look at the acts relatively, and consider which have the most bearing on determining the question as to what was the state of his mind at the date of the act, whether he knew what he was doing at that time. Surely if the evidence shows that in the immediate neighbourhood of the commission of the act the man knew what he was doing, that he was intelligent, and capable of attending to his business, the natural inference must be that no matter how stupid in youth, no matter how wild in youth, no matter how reckless in youth, no matter what the opinions of other people may have been about him while a boy, or in time of childhood, a period did arrive in the immediate neighborhood of the commission of the crime when he knew what he was doing. So, in answer to Your Honour's question, I do admit

that the previous acts must be looked at, but I think they must be gauged so as to see which of those acts have the nearest co-relation and application to the crime we are trying.

Now I want to bring to Your Honour's attention another authority on this very subject, and a very great authority too. It is that of the late Sir James Hannen; and Your Honour will remember that he was the British Commissioner at Paris, that after a life of great judicial distinction and of great distinction at the Bar he was put in the Privy Council, and in the judicial section of the House of Lords, and when the arbitration respecting the Behring Sea took place at Paris, he was English Commissioner, and Sir John Thompson was the Canadian Commissioner, or rather they were both British Commissioners. About his great learning and ability there can be no doubt, even if we did not have this national tribute to his ability. This is the case of *Boughton v. Knight*, and it is reported in *Law Reports*, Vol. III., Probate and Divorce cases, at page 65. The question there, may it please the Court, is again about a will; it is one of this same family of cases about a will, and—as Your Honour is aware—under the English Statute they have the provision that a man must be of “sound mind, memory and understanding,” and these decisions with regard to the testamentary capacity in England have been rendered with reference to these words “sound mind, memory and understanding.” In rendering this decision Sir James Hannen has expressed certain opinions with regard to the validity of this will, that are not material in this case. At page 67, however, he says: “*In considering the question, therefore, of degree, large allowance must be made for the difference of individual character. Eccentricities, as they are commonly called, of manner, of habits, of life, of amusements, of dress and so on, must be disregarded. If a man has not contracted the ties of domestic life, or if, unhappily, they have been severed, a wide deviation from the ordinary type may be expected, and if a man's tastes induce him to withdraw himself from intercourse with friends and neighbours, a still wider*

divergence from the ordinary type may be expected ; we must not easily assume that, because a man indulges his humours in unaccustomed ways, he is therefore of unsound mind. We must apply some other test than whether or not the man is very different from other men."

Then, may it please the Court, he goes on to speak about another branch of the case, and he finally comes to distinguish the civil capacity to make a will under the English statute from the criminal responsibility in a matter like that we have to deal with here. He says, at page 72, "*It is essential to constitute responsibility for crime, that a man should understand the nature and quality of the thing that he is doing, or that he shall be able to distinguish, in the act he is doing, right from wrong. Now, a very small degree of intelligence is sufficient to enable a man to judge of the quality and nature of the act, whether he is doing right or wrong when he kills another man ; accordingly, he is responsible for the crime committed if he possesses that amount of intelligence.*"

What amount of intelligence ? "A very small amount of intelligence." So that here we have not only the distinction drawn between capacity to contract under the English Statute and in respect of executing a will, or in the other case a Power of Attorney, because in one of the other cases referred to in Taylor the question is in respect of the capacity to execute a Power of Attorney and the amount of intelligence that is sufficient to make one answer for a crime. And the argument was this :—A man knows perfectly well when he is committing a crime. It does not require much intelligence for him to know when he commits murder ; but it requires a very much larger degree of intelligence for a man to understand the complex provisions of a complicated will.

Now, having left that question of the burden of proof, and having made this distinction, I will be very glad to send these books to Your Honour, because the distinction is very well and ably defined.

BY THE COURT.—I do not see that it makes any difference as to what I ruled the other day. I will submit to you

what I understand, that when you prove a man is insane before the crime, then the jury can infer from that evidence that at the time of the crime he was insane.

MR. MACMASTER, Q.C.—I do not think that at all.

THE COURT.—It does not follow because the Defence does not bring in evidence at the moment of the crime that the jury cannot infer that he was insane from the evidence of certain facts anterior.

MR. MACMASTER, Q.C.—I misunderstood, Your Honour.

THE COURT—I go that far, and if you prove that a man is insane before the crime, by facts anterior to the crime, and if still the presumption exists that he must be considered as insane if you do not prove at the moment of the crime that he is insane, but I am not ready to admit that, but the jury can infer against that presumption of law that exists when there is no evidence—can infer that he was insane at the very moment he committed the crime by the evidence of mere anterior acts.

MR. MACMASTER, Q.C.—I agree with Your Honour to that, but they must consider all the acts, all the anterior acts, and the acts immediately surrounding the crime.

BY THE COURT.—If there is no evidence of insanity at the very moment the act was done, that then the presumption exists although there is proof of insanity before, well I do not agree with that, but if you say the jury can infer insanity at the moment the act is committed by the evidence of anterior acts, they can all be taken together, well, then, I agree with that.

MR. MACMASTER, Q.C.—I cannot agree to that proposition; I thought I was with Your Honour, but I am not. Your Honour will find that the law says the moment he commits the acts he is supposed to be sane.

THE COURT.—Supposing that nobody had seen the man kill the others—there was no evidence as to the fact itself, except it was asserted that he did the act, but there is evidence that a month or year before the man was utterly insane, should not the jury say: "Well, we will take into

consideration the evidence of his position before the crime, to decide that at the moment he committed the crime he was insane," or would they be prevented from giving such a verdict by the presumption of law?

MR. MACMASTER, Q.C.—Well, Your Honour, I think the jury would have to be satisfied that at the time he committed the act the man was insane.

BY THE COURT.—There is no doubt about that, and they can satisfy themselves by the evidence of anterior acts.

MR. MACMASTER, Q.C.—Yes, there is no doubt of it, but I do not think it would be reasonable that they should be satisfied by the extreme case that Your Honour has put by way of illustration.

Now, Your Honour will remember this, that in the case of Riel, which has been referred to in this trial, it has been proved here by Dr. Daniel Clarke that Mr. Riel was 17 months in a lunatic asylum in the Province of Quebec, and they tried him in the North-West for murder, and the Defence proved the fact that he was in an asylum for 17 months, but the law still presumed that although he had been in an asylum and discharged, he was sane at the time he committed the acts of rebellion in the North-West territories.

BY THE COURT.—Then I would say that the jurors were satisfied that, taking the whole evidence, the man was insane before, but that at the moment of the crime he was sane, but they would not be excluded from giving such a verdict by the presumption of law in such a case, and I think there is not much difference between our understanding of the law.

MR. MACMASTER, Q.C.—I do not know that there is. Now, another theme crops up, and I would like the matter cleared up a little more. Your Honour says "by anterior, by previous acts." I cannot accept that as a full definition; it must not only be anterior acts, but the acts immediately surrounding and following the commission of the crime. Why the most important thing in connection with this matter is

the conduct of the prisoner that night after committing the crime.

THE COURT.—That must be taken into consideration.

MR. MACMASTER, Q.C.—If we are going to judge this man by previous acts, and if we exclude the actual tragedy itself . .

THE COURT.—I do not say that.

MR. MACMASTER, Q.C.—With regard to the previous acts, my contention as a matter of law in this, that the acts immediately preceding the tragedy and near to the tragedy, overbear and are infinitely more important than the acts that are remote in life.

Now I will pass on from that. The next point I want to call Your Honour's attention to is the question of the experts ; there is no doubt in the world that the Court and jury may receive aid from experts, that is, it may receive aid from experts where they can bring to the Court and jury something from science that is not a matter of common knowledge ; but I say that when an expert goes out of his way to pass an opinion upon a thing that Your Honour has as much right to know about, and each juror in the box has as much right to know about as he has, he is putting himself out of his proper position, and taking up a position that is not recognized by science, and therefore his evidence is not scientific evidence.

There is another thing with regard to these experts which has been mentioned as a matter of reproach to the Crown, that they have not called experts ; we feel that we did not require experts, we feel that the matter is sufficiently simple, that it can be disposed of without calling in the aid of people with glasses on them to discern whether there is crime in this act or not. The Defence may have thought it was necessary to have experts, and I am not taking exception to that at all, they had a perfect right to have them, and I do not criticise that, but I say the experts called by the Defence in order to make out the insanity of this man, and the extremes to which they have gone, are open to the criticism that Taylor on Evidence makes on experts, founded on very great and high authority, and I ask that Your Honour should

give to the jury your appreciation of experts generally, and I ask Your Honour now to take a note of Mr. Taylor's opinion and of Lord Campbell's opinion on evidence of experts.

In the first volume of Taylor, at p. 79, the author says :—

“ Perhaps the testimony which least deserves credit with the jury is that of skilled witnesses. These gentlemen are usually required to speak not to facts, but to opinions ; and when this is the case it is often quite surprising to see with what facility and to what an extent their views can be made to correspond with the wishes or the interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of expressing a candid opinion. Being zealous partisans, their belief becomes synonymous with faith as defined by the Apostle, and it too often is but “ the substance of things hoped for, the evidence of things not seen.” To adopt the language of Lord Campbell, “ Skilled witnesses come with such a bias on their minds to support the cause in which they are embarked that hardly any weight should be given to their evidence.”

That is one reason why the Crown has not thought it necessary to call upon experts, because that is the usual appreciation of them, especially when they go out of their way to support their cause.

The next point to which I call Your Honour's attention is, that there is no recognition given in the law to “ moral insanity ”—no recognition given by any of the legal authorities.

BY THE COURT.—Not if you distinguish it from natural imbecility.

MR. MACMASTER, Q.C.—Yes, Your Honour ; but there is no recognition given whatever in any one case to moral insanity. I cannot find one case, in the whole course of English decisions, where a Judge has charged that moral insanity would be a defence for a man. Suppose a man had no morals at all, that he was a black criminal, could he set that up as a defence, and could he doctor some Court and say . . .

THE COURT.—He has no moral principles because he is insane.

MR. MACMASTER, Q.C.—He could have just as good an intellect as the Judge on the Bench, or . . .

THE COURT.—Then that would not excuse him.

MR. MACMASTER, Q.C.—No. He is not insane, so in that sense moral imbecility and moral insanity are no defence whatever in law, and I do not trouble Your Honour to cite authorities on that, because no authorities can be cited where moral imbecility or moral insanity ever excused a man. Then, in addition to that, is there anything in the law, which recognizes that a mere impulse—impulsive insanity—will excuse a man? Is there any recognition of that in the law? I submit, as a proposition of law, that there is no authority in any case in the English or Canadian Law Courts recognizing impulsive insanity as a justification for crime. I fail to find any; doctors set it up, doctors set up moral insanity; but where are they recognized in law? I can find no recognition whatever; consequently it is difficult for one to put his hand on a case. The only thing that can be recognized is the general term of the law—"natural imbecility and disease of the mind." And what is "natural imbecility" under the definition of the law? We do not care for the meaning of words, for this man has been called more words than would condemn a man to a thousand years' punishment; but what is the meaning of "natural imbecility" as interpreted in Roscoe and Archibald and all the authorities? Why, they say it is the case of a man that does not know his father and mother—a state of idiocy; of a man who cannot tell the days of the week—a man who cannot count twenty. That is the definition given by the law. That is not the case of this prisoner; but that is the definition of natural imbecility given by the law.

Then we come, may it please the Court, to the case of disease of the mind, and in that connection there is a good deal more room for contention; but it is contended that the disease of the mind in this case is delusional insanity, that is, a species of insanity coming on afterwards, and that that insanity

was symptomised (if I may use that word) by certain delusions and certain hallucinations. Now, I will not discuss that now, I will discuss the facts regarding that to the jury, but I say that in order that this should have a foundation the prisoner must have had a complete misconception of fact. We had two or three illustrations of what a delusion might be ; we had one read to you and approved of by Dr. Anglin during his cross-examination. One was the case of a man who was in the asylum and imagined that he lived in the time of Noah, that he was so many thousand years old, that he had travelled with St. Paul, and that he gave St. Paul a lift on Peebles Road in Scotland. Well, that was a complete delusion, and we have the other case of a woman who imagined she was one of the persons of the Trinity. There is a complete misconception as to fact, and to be a delusion, the mind must be upset and paralysed by the individual imagining a state of things that is utterly incompatible with fact. For instance, a lunatic thinks he has a glass leg, and he cannot put his leg on the ground. Another thinks that he has rats in his inside, and that he cannot eat, though dying of starvation. These are delusions, and when we come to submit the facts to the jury we will find how far these principles are in consonance with the delusions mentioned in this case.

I was very much pleased when my learned friend, Mr. St. Pierre, discussed this question, and I do not think Your Honour will take it amiss if the Counsel in the case makes some reference to the subject, and what has been done before, for it is no disparagement to Your Honour's great learning and great experience. This is a difficult question, and this is an important trial, and I am sure that everybody connected with it wishes to do the right thing. If we refer to these cases and these authorities, I am sure it will not be ill-received by Your Honour at all events. I refer to a very celebrated case decided since the Macnaghton case. It is the case of the Queen against Burton, and it is cited in all the books and in III. Foster and Finlayson, at page 780. Now the charge was delivered by Mr. Justice Wightman, and it is very short. It

is only a page, and I shall take the liberty of reading it to Your Honour :—

“ As there was no doubt about the act, the only question was whether the prisoner, at the time he committed it, was in such a state of mind as not to be responsible for it. The prisoner’s account of it was, that he had done it from a morbid feeling ; that he was tired of life, and wished to be rid of it. No doubt, prisoners had been acquitted of murder on the ground of insanity ; but the question was, what were the cases in which men were to be absolved from responsibility on that ground. Hatfield’s case differed from the present, for there, wounds had been received on the head, which were proved to have injured the brain. In the more recent case of Macnaghton, the Judges had laid down the rule to be, that there must, to raise the defence, be a defect of reason from disease of the mind, so as that the person did not know the nature and quality of the act he committed, or did not know whether it was right or wrong. Now, to apply this rule to the present case would be the duty of the jury. It was not mere eccentricity of conduct which made a man legally irresponsible for his acts. The medical man called for the defence defined homicidal mania to be a propensity to kill, and described moral insanity as a state of mind under which a man, perfectly aware that it was wrong to do so, killed another under an uncontrollable impulse. This would appear to be a most dangerous doctrine, and fatal to the interests of society, and security of life. The question is, whether such a theory is in accordance with law ? The rule, as laid down by the Judges, is quite inconsistent with such a view ; for it was, that a man was responsible for his actions, if he knew the difference between right and wrong. It was urged, that the prisoner did the act to be hanged, and so, was under an insane delusion, but what delusion was he under ? So far from it, it showed that he was quite conscious of the nature of the act and of its consequences. He was supposed to desire to be hanged, and in order to attain the object, committed murder. That might show a morbid state of mind, but not delusion.

Homicidal mania, again, as described by the witnesses for the defence, showed no delusion. It merely showed a morbid desire for blood. Delusion meant the belief in what did not exist. The question for the jury was, whether the prisoner, at the time he committed the act, was labouring under such a species of insanity, as to be unaware of the nature, the character, or the consequences of the act he committed. In other words, whether he was incapable of knowing that what he did was wrong. If so, they should acquit him. If otherwise, they should find a verdict of guilty. Verdict guilty."

I desire, out of respect for my learned friend, Mr. St. Pierre, to make a brief reference to the case of Hadfield. That, of course, is a very leading case, and naturally so, because the attack was made upon the King by Hadfield, and it attracted an enormous amount of attention, and the greatest lawyers of the day were engaged in the case. That case is reported in full in 27, Howell's State Trials, p. 1288. Now, what was proven in that case? I have a full report in the State Trials before me, but I will not take up the time of Your Honour and the jury by reading it, but my learned friend will correct me if I am wrong. This man had been a soldier in the army, he was wounded in battle, he was taken off the field in an unconscious condition, he was seven days in delirium suffering from the blows he had received on his head, he was every year from the month of May until the end of the dog-days (that is, about the first of August) in a lunatic asylum, and ultimately, partly through the effect of his wounds—and no doubt the brain had been damaged—and partly from other causes, he became periodically insane. He had at one particular period conceived certain ideas with regard to the Almighty and with regard to our Saviour, and the most extravagant and blasphemous ideas. On the very day before he shot at the King he attacked his own child, an infant that he dearly loved, and tried to kill it by forcibly thrusting it against a bedpost. He then jumped into a cupboard, and, when overpowered there, he spilt a little dish of water and, looking at the water, said, "Look at the blood run-

ning from my leg." Under these circumstances, and owing to the fact that this occurred just the day before he shot at the King, Lord Kenyon, who tried the case, asked the Crown, after this evidence was put in by the Defence, if it was possible to rebut the facts. The Solicitor-General of that day, and Mr. Garrow with him, both said they could not rebut this, it was an actual fact; whereupon Lord Kenyon directed the jury, that, under the special circumstances of the case, they could bring in a verdict of not guilty, but that he hoped some steps would be taken by the Government to keep this man perfectly safe, and the jury brought in a verdict of not guilty, on the ground of insanity.

Now, that celebrated case is not only interesting in this respect, but it is also interesting in regard to some of the remarks that were made by the leading Counsel for the defence and the leading Counsel of that day, who afterwards became so eminent on the Bench. The law laid down by Mr. Erskine, then speaking for the defence, has never been seriously controverted to this day, so much so that in a recent great trial, Lord Chief Justice Cockburn cited the law in England, stating "this is the law as put down by this distinguished man, Lord (then Mr. Erskine), and it is the indisputable law to-day." Now I take the liberty of reading from it one or two sentences.

Mr. Erskine, speaking for the Defence, says, "I agree with the Attorney-General that the law, in neither civil nor criminal cases will measure the degrees of men's understandings. *A weak man, however much below the ordinary standard of human intellect, is not only responsible for crimes, but is bound by his contracts and may exercise dominion over his property.*"

Then he goes on to another phase of the case, and then he says with regard to delusions:—"Delusion, therefore, where there is no frenzy or raving madness is the true character of insanity. Where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to

be acquitted, and if Courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you, not only that the unhappy prisoner was a lunatic within my own definition of lunacy, but that the act in question was the immediate unqualified offspring of the disease. Where the connection is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind ; but still, I think that as a doctrine of law, the delusion and the act should be connected."

BY THE COURT.—What is that book ?

MR. MACMASTER, Q.C.—This is the report of the speech of Mr. Erskine as contained in the State Trials, 27 Howell's State Trials, page 1307, and I shall be pleased to send the volume of the State Trials to you.

Now, one word more, Mr. Erskine approaches the matter this way ; he says, "I admit also, that the mysterious, and, in this case, traitorous intention must be inferred from all these acts, unless I can rebut the inferences by proof. If I were to fire a pistol towards you, gentlemen, where you are now sitting, the act would undoubtedly infer the malice. The whole proof therefore is undoubtedly cast upon me."

Now, may it please the Court, I submit that as a correct statement of the law with regard to where the burden of responsibility lies in such matters. I am not going to trouble Your Honour about citing medical authorities, but I will refer to the well-known work that is often referred to in our Courts, "Taylor's Medical Jurisprudence." One paragraph at page 719, says ; "When the defence of insanity is set up on a charge of murder—in order to warrant the jury in acquitting a prisoner, it must be proved affirmatively that he was insane in a certain legal sense at the time of perpetrating the act ; if this be left in doubt, and if the crime charged in the indictment be proved, it is their duty to convict him. It is necessary to impress upon the mind of the medical witness, that it is not

medical but legal insanity which is required to be proved, on these occasions. *As hardly two men agree about what is madness in a medical sense, and as some doctors have even held that all great criminals are necessarily insane, it is obvious that the power to absolve from responsibility could not at present be placed in the hands of the profession, with a due regard to the protection of society, or a safe administration of the law."*

Then, may it please the Court, just one authority to show that insanity cannot be inferred from the atrocity of the crime itself.

Buswell on Insanity, at page 14 (and this book contains quite a collection of decisions):—"In other words, applying a rule hereafter stated, the delusions which indicate such insanity as will relieve its subject from criminal responsibility must be such as relate to facts and objects, not mere wrong moral notions or impressions; and the aberration must be mental, not moral merely. The logical result of the doctrine which would make moral perversity the legal equivalent of insanity, has been well stated as follows," and then he goes on, and says:—"I cannot yield to the doctrine which has been suggested, founded upon what is called 'moral insanity.' Every man, however learned and intellectual, who, regardless of the laws of God and man, is guilty of murder, or other high and disgraceful crimes, is most emphatically morally insane. Such doctrine would lead to the most pernicious consequences, and it would very soon come to be a question for the jury whether the enormity of the act was not in itself sufficient evidence of such insanity, and then the more horrible the act the greater would be the evidence of such insanity."

I call Your Honour's attention again to the answers given by the judges to the House of Lords with regard to the subject of delusions, in which they specifically state, in answer to I think either the first or second question, or the first and second questions taken together, that a morbid delusion oppressing the mind is no excuse whatever legally. I will just read that, and then I will finish, Your Honour. Now the

first question is this, Roscoe, page 953: "The House of Lords asked the judges what was the law respecting the alleged crimes committed by persons afflicted with insane delusions, in respect of one or more particular subjects or persons, as for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of, with a view, under the insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?" In answer to which question the Judge said: "Assuming that Your Lordships enquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand Your Lordships to mean the law of the land."

And then, in answer to the next question with regard to delusions, they say the right and wrong test is not a sufficiently full and logical statement of the matter, and they point to what they referred to in the previous answer to whether a man has the amount of common knowledge to know that he is breaking the law of the land, not necessarily moral wrong, but does he know he is doing wrong because he is invading the laws that hold society together? Does he know he is doing wrong in that respect? The State cannot take cognizance of the morals of people; a man may be a Mahomedan, a man may be a fatalist, he may be a Christian, he may be a Jew. The different religions may impress different ideas in respect of morals upon the hearts of their respective adherents, but the law of the land says, "we cannot take account of difference of morals between you, we cannot say that a Mahomedan will

be held responsible to a less degree than a Roman Catholic or a Presbyterian, but all men who seek the advantage of living in this country must walk equally before the law. They are assumed to know the law of the country, and right and wrong in respect of the law, and if a man breaks the law, no matter what his nationality or morals, or whether he has any morals, for a breach of the law which is the common protection of all, he must suffer." And therefore the fine distinction made by the doctors as to whether he understood morals is just like "the flowers that bloom in the spring," they "have nothing to do with the case;" consequently the Judges, in making their final deliverance to the House of Lords, said, "The law is administered upon the principle that everyone must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question for the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

The full report of the Judges on the application of the House of Lords to the Judges, for an expression of opinion upon the law, may be found in 4 Wallis, State Trials, new series, pp. 847-934.

ADDRESS OF HIS HONOUR MR. JUSTICE MATHIEU
TO THE JURY.

Gentlemen of the Jury :—

The prisoner at the Bar, Francis Valentine Cuthbert Shortis, is accused of having murdered John Loye, on the 1st day of March last (1895).

Killing a human being is called homicide. Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. Homicide may be either culpable or not culpable. Homicide is culpable when it consists in the killing of any person by an unlawful act, without lawful excuse. Culpable homicide is murder, if the offender means to cause the death of the person killed. Murder is therefore the killing of any person by an unlawful act, without lawful excuse. Insanity is one lawful excuse recognized by law. No person should be convicted of murder, if the killing was done by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act, and of knowing that such act was wrong. A person labouring under specific delusions, but in other respects sane, should not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act.

I have just stated to you the law which is to guide us in the present case.

The prisoner, having been called to hold up his hands, did so. The indictment was read to him, and he was asked whether he was guilty or not guilty, and he answered, " I am not guilty."

By the law, the ground of the defence, resulting from insanity, may be relied on, under this plea of *not guilty*, so

that, under the plea of *not guilty*, the prisoner was authorized, by law, to prove that he was not guilty, because, at the time of the killing, he was insane.

But, the prisoner's counsel, in addition to the oral plea of *not guilty*, made by the accused, filed in writing a special plea, in the following words : " That, at the time of the commission of the acts alleged in the indictment, the prisoner was labouring under natural imbecility and disease of the mind, to such an extent as rendered him incapable of appreciating the nature and quality of the act, and of knowing that such act was wrong, and was, at the time, in a state of unconsciousness and disease of mind, by which a free determination of his will was excluded ; was in a state of madness, and was insane."

The Crown has moved to reject that part of this special plea which reads as follows : " And was, at the time, in a state of unconsciousness and disease of mind, by which a free determination of his will was excluded, was in a state of madness."

As the prisoner, in person, had made a plea of *not guilty*, and as, under that plea, he could prove insanity, if he relied on it as a ground of defence, I considered the plea offered by his Counsel more in the nature of a notice to the Court and to the Crown of the legal pretensions which they intended to urge and of the state of the prisoner's mind which they intended to prove, and I then refused to reject the objectionable words, because there are certain degrees in insanity, and I was reluctant to impede the Defence in the evidence which they intended to make as to the exact condition of the prisoner's mind at the time of the killing, and also as I knew that it would be my duty, as it is now my duty, to state to you what is the law on the question.

I will now briefly refer to the facts relating to the killing. I say briefly, as the killing of Loye by the prisoner is so evidently proved that it cannot be denied, and it is not denied. But we must refer to those facts, and specially you, gentlemen of the jury, you must remember them, as you will have to decide whether the prisoner at the Bar, at the time of the

killing, and in the killing, knew whether he was doing wrong or not.

The prisoner was employed by the Montreal Cotton Company, at Valleyfield, as secretary of the manager, from the 21st day of July, 1894, to the 25th day of August following, altogether five weeks. Then he left that position, but he was given the privilege of learning the mode of fabrication of the Company. He continued his connection with the Company in trying to learn his business up to about the first day of January last (1895), when he severed his connection with the Company. From the 1st of January last to the 1st of March last, he used to go to the office of the Company at different intervals. He understood the mill in every detail, and he knew the mode of doing business of the Company. The Company employs about thirteen hundred men. They are paid every fortnight, on the Monday. The way the Company proceeds is this: On the Thursday, they send from Valleyfield to Montreal a requisition to the Bank of Montreal for the money they want to pay the men. The money is sent by express, and reaches Valleyfield between six and seven o'clock on the Friday evening. The person in charge of the office receives the money, puts it in the vault in the office, and waits until one or two of the clerks of the Company come in to open the package in case of mistakes. Then he opens the package, counts the money to see if it corresponds with the requisition. Then, with the help of clerks, he proceeds to divide the money in small sums for each man. Those small packages are remitted to the men, on the Monday afternoon. On Friday, the first of March last (1895), John Lowe, who then had charge of the office of the Company, received the money from the express, about fourteen thousand dollars (\$14,000.) At about half past seven, Lowe and Hugh A. Wilson, one of the clerks of the Company, began to divide the money in small amounts, and put it in packages for each of the men. At about nine o'clock, John Loye, also one of the clerks of the Company, came in the office and began to work also.

Maxime Lebœuf, one of the night watchmen of the Company, was also in the office. At about ten o'clock, the prisoner rapped at the door of the office. Loyer inquired who it was, and the prisoner answered, "Shortis." Then Loyer and Maxime Lebœuf opened the door and let him in. The prisoner came in, and went to the counter which divides the office in two parts. He began to laugh and talk in his usual way. He used to be very friendly with Lowe and the other clerks. The prisoner then went around the counter and came to the pay table, where Lowe and Wilson were working, and continued talking and laughing as usual. Lowe's revolver, five chambers, 32 calibre, was lying on the pay table. The prisoner wanted to take it, but Lowe objected. The prisoner then went again to the counter, took an apple which he began to eat and took off his overcoat. He came back to the pay table, eating his apple and talking. He again asked for the revolver. Lowe unloaded the revolver and then gave it to him. The prisoner then said to Lowe that he would clean the revolver and asked Loyer if he had not oil for that purpose. Loyer got some oil for him and the accused began to clean the revolver. Whilst he was cleaning the revolver, Arthur Lebœuf, another of the night watchmen, came in and sat near the vault. The accused worked at the revolver for about an hour. He brought it back to the pay table, talking on various subjects. He asked Lowe permission to load it. Lowe would not allow him. He then laid the revolver on the table. Lowe and Wilson were just finishing the work for the evening. Wilson left the table to go and dress himself, Lowe began putting the balance of the money in the vault. When he had most of the money off he took the revolver off the table, turned away to a corner of the office and loaded the revolver, which he then placed in a drawer in the counter. The prisoner then came back to Lowe and said he would like to have the maker's name of the revolver. Lowe showed him the name and read it to him. The prisoner took the name on paper, Lowe then replaced it in the drawer and

took some silver off the table and books and put them in the vault.

In the meantime, the accused went to the drawer and took the revolver. When Lowe was coming out of the vault, he saw the accused with the revolver in his hand and he told him to leave that revolver alone ; that they could not work when he was fooling with the revolver. The prisoner then said that he wanted to get the model number. He then went to the middle desk, in the middle of the office, with the revolver. He then stood between Lowe and Arthur Lebœuf and the outside door, and opposite to Wilson and almost opposite to Loye. He pulled the revolver open and then closed it, and suddenly fired at Wilson, who was standing by the counter, at a distance of about five feet from the prisoner. He was so near that the powder discoloured Wilson's face and left marks on his clothes. The ball struck Wilson in the face. Wilson threw up his hands to his head and began to yell and prance. Lowe immediately rushed to Wilson and took him in his arms to support him, and Loye, who was then writing at his desk on the counter, near the place where Wilson then was, rushed to the telephone box to telephone to the doctor. They evidently both believed that it was an accident, but the prisoner said to Lowe, who was supporting Wilson in his arms : " If you move, I will shoot you." Then he turned quickly, made a step towards Loye, who was then in the telephone box, and fired at him. Loye fell. He was dead. Then the prisoner turned again towards Lowe and Wilson and fired at them. He does not appear to have hit them. Then Lowe, being frightened, left Wilson, passed under the pay table and jumped up on the other side, grabbed two packages of money which remained there on the pay table, and rushed to the vault, where Arthur Lebœuf had preceded him. As Lowe went to the vault, Shortis fired at him, but did not hit him. The ball struck the door of the vault. Lowe pulled the door after him and closed it by moving the inside bolts. The prisoner then went to try and open the vault's door, but Lowe held it tight.

Then the prisoner fired again twice at Wilson, who was trying to escape, but he missed him. When Shortis began to shoot, Maxime Lebœuf, one of the night watchmen, had gone on his round. After Loye had been killed, and when Lowe and Arthur Lebœuf were in the vault, and after three shots had been fired at Wilson, only one with effect, the prisoner hearing Maxime Lebœuf coming from the mill towards the office, cried to him : "Hello, Maxime ! Hello, Maxime ! What is the matter with you ? Come here." Lebœuf answered, "Nothing, nothing." Then the prisoner went round the counter and met Maxime Lebœuf in the door between the mill and the office, and fired at him and killed him. Maxime Lebœuf, after some struggle, fell dead. In the meantime Wilson, trying to escape, had run into the manager's office and closed the door after him. The prisoner then rushed to the manager's office and, finding the door closed on Wilson, he forced it open, although Wilson leaned on it, kicking one of the panels out. Wilson managed to escape, Shortis pursuing him, but the prisoner could not hit him, because apparently his revolver was empty. But he loaded his revolver and, as Wilson entered the large weave room, he fired at him again, but missed him. Wilson was then in the large weave room, at about ten feet of the first door leading from the weave room to the office. He fell on the floor from weakness. A few minutes after, the prisoner went back to Wilson, in the large weave room, with a lantern, which is supposed to be Maxime Lebœuf, the night watchman's lantern, and then fired again at Wilson, who was lying on the floor. The bullet entered below the collar bone, and passed through his body, grazing the lung and coming out between the ribs on his right side. Then, he went back again to the office. shooting again, it is supposed, at Lebœuf, who was probably dead then. Wilson recovered some strength and crawled to the other end of the weave room and fell again on the floor, near a bench that was there. Shortis went twice to look for him, but he had not then his lantern, and lit matches ; he could not find Wilson. The last

time he called him, and said, "Wilson! Wilson! for God's sake where are you?" Of course, Wilson did not answer. Then Shortis went back to the office, and Wilson managed to reach the pump-room, which was at a distance of about three hundred feet from the office. There he found Charles Lecompte and Napoleon Delisle, who went for Dr. Sutherland. Shortis went again to the vault door and said: "Lowe, for God's sake come out!" Lowe answered him, that he could not, but told him to turn the handle of the safe, which Shortis did, thinking that he would open it; but, instead of that, it had the effect of locking the safe. Lowe, from the vault, asked Shortis, "Where is John Loye?" and Shortis answered, "He has gone into the mill and I cannot find him, and Wilson is lying here. Come out and help me do something for him." Lowe told him: "Shortis, for God's sake, go out by the front door." Shortis answered, "Very well! All right, Lowe." The prisoner then went to the front door, slammed it and then came back to the vault door on his tip-toes. In the meantime, Dr. Sutherland, who had arrived at the mill and seen Wilson, after telephoning to Sparrow, one of the employees of the company, and being armed with an iron bolt, and Napoleon Delisle with a gas pipe, went through the mill towards the office where the prisoner was. On coming to the last door separating the office from the passage leading to the mill, they stood on each side of the door, holding their pipe and bolt in their hands ready to strike, and waited for Shortis, who had heard them, and was coming in their direction. When he was at a few feet from that door, they suddenly showed themselves, calling, "hands up," and then the prisoner, who had his loaded five chamber revolver in his left hand said: "I want to give myself up, here is my revolver. I do not know why I killed these men." The accused had then his overcoat on. It was buttoned up. It was then about a quarter to two o'clock. Then Dr. Sutherland found that Loye was lying dead in the telephone box. Then Lecompte, Smith and Sparrow, three employees of the Company, came in. They

found Maxime Lebœuf dead in the stairs leading from the place where he was killed to the lower flat. Three bullets were found in his body. His right wrist was tied by a pair of braces and there was a knot at the other end of the braces. We can presume that the prisoner pulled Lebœuf's body in the stairs to take him out of the way. When Smith arrived in the office and saw the prisoner, he told him : " You are the thing that did this." The prisoner, throwing his head back, said : " I am the man." And he added : " Shoot me, or lend me your revolver and I will shoot myself." They found on the prisoner, inside of his coat, a big chisel and, under a wool-len jersey which he had over his shirt and trousers, a loaded revolver of four chambers, 22 calibre, which he had, under his left arm, tied to a handkerchief which was on his chest as a shoulder belt, and they also found on him sixteen cartridges of 32 calibre and eleven cartridges of 22 calibre. The prisoner had taken those cartridges, at least those of thirty-two calibre, from the drawer where the revolver had been put by Lowe. The telephone receiver and other portions of the telephone were found broken in the passage near the place where Lebœuf had been shot. After being arrested, the prisoner asked permission to write a letter to Miss Anderson. They would not let him do it ; but somebody wrote the letter for him under his dictation and, at his request, sent it to Miss Anderson. The letter to Miss Anderson is in the following terms : " My dear M. Telephone home Anticere. Don't fret ; if Bob gives any dirty talk, you tell him to mind his own business or I will make it bad for him. Send Jack to me immediately. I remain yours lovingly, B. SHORTIS."

These are the circumstances of the killing. Do they constitute a murder ?

Murder is the killing any person, under the Queen's peace, with malice aforethought, either expressed or implied by law.

There is no difficulty as to the killing, and by whom the killing was done, On the first day of March last, John Loye was killed by Francis Valentine Cuthbert Shortis. The evidence with regard to that part of the case is positive, and

has not been attempted to be rebutted by the defence. But you have also to decide whether the killing of Loye by Shortis, the prisoner at the bar, has been done with malice

The malice is the chief characteristic by which murder is to be distinguished from any other species of homicide.

When the law makes use of the term malice, as descriptive of the crime of murder, it is not to be understood merely in the sense of a principle of malevolence to particulars, but as meaning, that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit; a heart regardless of all duties, and deliberately bent upon mischief. And, in general, any formed design of doing mischief may be called malice,

Malice may be either express or implied by law. Express malice is when one person kills another with a sedate, deliberate mind and formed design; such formed design being evidenced by external circumstances, discovering the inward intention; as lying in wait; antecedent menaces, former grudges, and concerted schemes to do the party some bodily harm. And malice is implied by law from any deliberate cruel act committed by one person against another, however sudden; thus, when a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person, unless of an abandoned heart, would be guilty of such an act upon a slight or no apparent cause. And where one is killed in consequence of such a wilful act as shows the person by whom it is committed to be an enemy to all mankind, the law will infer a general malice from such depraved inclination to mischief. And it should be observed, as a general rule, that all homicide is presumed to be malicious, and of course amounting to murder, until the contrary appears, from circumstances of alleviation, excuse, or justification; and that it is incumbent upon the prisoner to make out such circumstances to the satisfaction of the jury, unless they arise out of the evidence produced against him.

Indeed it is a universal principle, that when a man is

charged with doing an act, of which the probable consequences may be highly injurious, the intention is an inference of law resulting from the doing of the act.

By the evidence which has been produced before you, it has been established that the prisoner at the bar shot John Loye and killed him ; he killed him by an unlawful act. Even if you find no evidence of special malevolence, of pre-meditated hatred or revenge against Loye, the malice is presumed by law ; as the prisoner killed Loye by an illegal act, and he is guilty of murder and must be convicted of the crime of murder, unless he has proved some lawful excuse. The evidence of the killing of Loye by Shortis by an unlawful act is clear, and it will be your duty to bring a verdict of guilty against him, unless he has proved to your satisfaction a lawful excuse, or an excuse acknowledged by law.

Now, the excuse that the prisoner offers is that, at the time of the killing of Loye, he was labouring under natural imbecility and disease of the mind to such an extent as rendered him incapable of appreciating the nature and quality of his act, and of knowing that such act was wrong, and was at the time in a state of unconsciousness and disease of mind by which a free determination of his will was excluded, that he was in a state of madness and was insane.

I have told you before what is the law with regard to insanity. The prisoner, to avoid the conviction of murder, must have proved to your satisfaction that the killing of Loye was done by him when he was labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his act and of knowing that such act was wrong.

The prisoner says, that he was, at the time, in a state of unconsciousness and disease of mind, by which a free determination of his will was excluded, and that he was in a state of madness. If that means, that, at the time, he was labouring under natural imbecility and disease of the mind to such an extent as rendered him incapable of appreciating the nature and quality of his act, and of knowing that such act was

wrong, his excuse, if proved, is legal ; but if that means something else, then it is not legal, as the law does not recognize it. We are not here to make the law ; we cannot make the law ; we have no power to make the law. That law has been made by the competent authority, and we must follow that law.

The law says that the prisoner, to be excused, must have been at the time labouring under natural imbecility and disease of the mind, to such an extent as rendered him incapable of appreciating the nature and quality of his act, and of knowing that such act was wrong. It is the reason of man which makes him accountable for his actions, and the deprivation of reason acquits him of crime. The insanity is an excuse acknowledged by law, because, when a man is insane and does not know what he is doing he can no more be presumed to have acted maliciously. And, if the prisoner, by the evidence of insanity dispels the presumption of malice, express or implied by law, then there is no murder, as it would be shewn that the killing is not malicious but the outcome of insanity.

Every one is presumed to be sane at the time of doing any act until the contrary is proved. The prisoner was then bound to prove his insanity ; the burden of proof of insanity lies on the defence ; otherwise he would be presumed to be sane. The prisoner, acknowledging his obligation to prove his insanity, has brought certain evidence in that direction, evidence taken in Ireland and here ; and the Crown has also brought certain evidence to prove his sanity. The question then is whether the prisoner was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character and consequence of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime.

Insanity is a disease of the brain producing a disorder of the mind. The insanity which takes away the criminal quality of the act must amount to mental disease of such

character as to prevent its subject from understanding the nature and quality of the act he is doing; the aberration must be mental, not moral merely.

Natural imbecility is a natural weakness of the mind owing to defective mental development, and may be of any degree of deficiency, moral and intellectual; on the one hand, passing by imperceptible gradations into idiocy, and, on the other hand, passing insensibly into ordinary intelligence. To establish the existence of imbecility, it must be shown that there is a defect of understanding, not merely from a want of development of the mental faculties in consequence of a deficient education, but a defect of understanding by reason of some natural incapacity which no education will overcome, a mental privation.

Has the prisoner shown that he is an imbecile, a natural imbecile? Has he proved insanity or a disease of his mind to such an extent as to render him incapable of appreciating the nature and quality of his act and of knowing that such act was wrong?

That is the question which we have to examine.

Whether the prisoner was sane or insane at the time of the murder is a question of fact triable by the jury, and dependant upon the previous and contemporaneous acts of the accused. As I have told you before, everyone is presumed to be sane at the time of doing any act until the contrary is proved.

Now, how are you going to decide from his acts previous and contemporaneous to the murder whether the prisoner was sane or insane at the time of the murder?

You will have to decide whether the acts of the prisoner anterior and at the time of the murder are acts which indicate that the prisoner was insane, whether they are acts that an ordinary sane boy would do. You can decide as to the insanity of the prisoner by comparing his conduct and his acts anterior to the murder to the conduct and the acts of an ordinary sane man. You have no other way to decide that question, for you cannot penetrate into his heart and his

mind. It seems to me that sanity in a man would consist in doing things as other people in general do. It is only by comparison that you can decide whether the accused was sane or not.

Before referring to the evidence on the insanity and imbecility of the accused, let me say a few words about specific delusions. The law says that a person labouring under specific delusions, but in other respects sane, should not be acquitted on the ground of insanity unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act. For example, if, under the influence of delusion, he supposes another man to be in the act of attempting to take his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment ; for, by the law, homicide in self-defence is excusable. Homicide in self-defence is such as occurs when a man being violently attacked is obliged to kill his assailant in order to save his own life. If the prisoner had proved that, at the time of killing Loye, he was labouring under such a specific delusion with regard to Loye, he could not be convicted. But, if the delusion caused him to believe in the existence of some state of things which, if it existed, would not justify or excuse his act ; for example, if his delusion was that the deceased Loye had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, then he would be liable to punishment, and he should be convicted.

But it was not at first pretended by the Defence that the prisoner was labouring under specific delusions. The specific delusions are not alleged in the special plea filed for him, and it was not then pretended that at the time of the killing the prisoner was labouring under specific delusions. It is now pretended that at the time of the killing the prisoner was labouring under the specific delusion that he was persecuted by Simpson and that he was in his hands to a certain extent. If the prisoner was sane in certain respects, but labouring, at the time of the killing under that delusion of the persecution

of Simpson, I must tell you now that that delusion would not justify him, because, if the facts which form the object of the delusion really existed, that would not justify the murder of Loye by the prisoner. You must remember that, immediately after the killing, the accused said to Dr. Sutherland that he did not know why he shot those men. That is a strong evidence that he was not labouring under specific delusion with regard to the men he killed. If he was insane in every respect to such an extent as to render him incapable of appreciating the murder he was doing, and of knowing that when he killed Loye he was doing wrong, then the delusion would not amount to much, that would be insanity that would be the excuse, and not the specific delusion. Putting then aside the specific delusions, there remain the natural imbecility and insanity or disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his act, and of knowing that such act was wrong.

We will now refer to the evidence adduced by the prisoner to establish his insanity, and his natural imbecility.

A commissioner was appointed, under the statute, by the Judge of the Superior Court in this district, to take evidence upon oath of persons residing in the United Kingdom of Great Britain and Ireland, and specially in Ireland, able to give material information relating to the accusation of murder preferred against the prisoner. Forty-eight witnesses have been examined by the commissioner, and that evidence has been read over to you. The defence has also produced here several witnesses, and specially most able medical men, and men who have made special study of insanity. The following facts have been established by the evidence adduced by the prisoner, to prove his insanity.

It is proved, and I think it cannot be denied, that hereditary influence is undoubtedly a great factor in the production of insanity; a great number of cases being traceable to such taint. Not that the insanity of the father shall necessarily show in the children. It may be latent in the

second generation and may reappear in the third and fourth generations. But insanity, being the result of a disorder of the brain, may be transmitted like any other disease. The prisoner has proved that his grandfather and other members of his family were insane ; and he points to this evidence as showing the cause of his insanity.

Thomas Shortis, the grandfather of the accused, was married to Mary Wineberry. He died, on the tenth day of March, 1881, at the age of sixty-five years, of chronic softening of the brain, of which he suffered for a year and nine months before. At the outset, he suffered from mania and, subsequently, from dementia and complete imbecility, ultimately complete fatuity. He had delusions and hallucinations during his illness, that some of deceased relatives were about him. He imagined that he would be hanged, and occasionally it was very difficult to keep him under restraint. Towards the end he became quite imbecile and lost all reasoning power, gradually losing the use of his limbs and his sight. It is stated that he was then insane and that he did not know the difference between right and wrong.

John Shortis, the uncle of the accused and brother of his father, was admitted in the Clannell Asylum on the 16th day of May, 1868, and was discharged on the 10th day of November following. He was re-admitted in the asylum on the 6th July, 1871. He was then suffering from mania, and he was discharged again on the 9th day of January, 1872. He was again re-admitted on the 2nd day of May, 1872, and again discharged on the 7th day of June, 1872. He was a fourth time re-admitted in the asylum, on the 23rd day of July, 1872, and he died in the asylum on the 7th day of February, 1886, at the age of thirty-nine years, of cerebro-spinal disease and epilepsy, of which he had suffered for twenty years. He was very violent at times, and had no control over himself.

Francis Wineberry, a brother of the prisoner's grandmother, and an uncle of the ~~father~~ of the accused, was also admitted in the Clannell Lunatic Asylum on the 27th day of October,

1871. His delusion was that he was going to die a pauper. This species of insanity of Francis Wineberry was dementia, but in the asylum he developed a disease called general paralysis of the insane, and he died, in the asylum, of that disease on the 27th day of March, 1873, at the age of thirty-nine years. He was completely insane when he was admitted in the asylum.

Kate Wineberry, the sister of the mother of the prisoner's father, was also admitted in the Clannmel Lunatic Asylum. She suffered from dementia. She had a disposition to injure others.

William Scott, a first cousin of Francis Shortis, the father of the accused, was admitted to the Clannmel Lunatic Asylum on the 30th day of March, 1888. He was then a young boy of not more than ten or eleven years of age. It was reported that an old woman had met him on his father's farm, and threatened him with a stick. He was very much frightened and excited and ran away. It was from that excitement that he got epileptic attacks, or *petit mal*. He was discharged on the 14th day of May, 1888.

The father of the accused passes for a solid, level headed man.

Doctor Gardner, aged 65 years, of Clannmel, medical superintendent of the Clannmel Lunatic Asylum during twenty-six years and a half, says that more than a half of the insanes get the disease by heredity, and that the insanity of the grandfather of the prisoner and of one of his uncles, on the paternal side, would lead to the conclusion that insanity is developing itself in the prisoner.

Now, if you believe that insanity may be transmitted by heredity, if you admit the large play of hereditary influence in human development, and I think that cannot be denied, then if you find that, at the time of the killing, on the first of March last, the prisoner was insane, you may trace the cause of his insanity in his ancestry. But the point in the case, and the important point in the case, is whether, at the time of the killing, the prisoner was insane or not. You must ascertain

whether, then, he was insane. For his ancestor, his grandfather, may have been insane, and the prisoner might be sane, as we have seen that insanity, like any other disease, is not necessarily transmitted by heredity.

We have, then, now to examine the evidence adduced by the prisoner, and taken in Ireland and here, as to his own insanity and resulting from his acts anterior and contemporaneous to the killing.

That evidence has been commented and most ably commented on both sides.

I will simply mention the facts established by the evidence in Ireland without discussing them ; but I may perhaps be permitted to say that it is possible that there might be some exaggeration in that evidence. In fact, it seems to be exaggerated.

The prisoner, at the time of the killing, was a young man of the age of twenty years and fifteen days. He is the only child of Francis Shortis, now aged forty-eight years, a cattle dealer, of Waterford, Ireland, and of Mary A. Hayes, his wife. His parents have a first-class position in society and are in good circumstances. They are people of means. They are worth over a hundred thousand dollars. His father was often away from home for his business, but the accused was petted at home by his mother, who, like all good mothers, and mothers, as you know, are all good, bent all her heart on her only son, her only child. And, through her kindness and love, probably, she always had a great deal of influence over him ; although he caused her a great deal of anxiety. He did not develop like the other children. He did not speak nor walk until three or four years. He had the ricketts.

He was a pupil of the Christian Brothers at Waterford for five or six years. There it appears, by the evidence, that he was always very singular and restless. He was exceedingly impulsive and spasmodic in his actions. He had always foolish tricks. He used to laugh boisterously. He was a source of infinite trouble. He would stick steel pens in the head of his comrades. He would constantly have rows with

boys, and he would not be allowed to play with them without having a person to control him. Coming from school he would set the boys to fight and would fight himself if they did not do what he told them. Once he attacked a number of soldiers with stones. His intelligence with regard to studies was weak. He was considered as a weak minded boy.

He had also a private teacher who, it is said, could hardly teach him anything. There were only two subjects he could learn, it was the French language and chemistry. He was fond of chemistry, and specially of the experiments.

I will recall to your memory few of the particular facts anterior to the killing which the evidence has revealed, to establish the insanity or imbecility of the prisoner, and I will allude, in a general way, to the other facts given in evidence.

Once, at races that had taken place, he drove, in a reckless way, passing through a crowd of people, and struck one man on the head with a stick. People threw stones at him, but he drove so fast that they did not hit him.

One day, a man engaged by his father, was carrying a bundle of hay on his back, the prisoner fired a shot with his revolver at the bundle of hay, and then laughed and clapped his hands.

Three or four years ago, a painter was painting a landing stage on the river. He had a number of planks tied together and floating on the water. He was on the planks, painting. The prisoner went down with the painter on the planks, cut the twine and let the planks go adrift. Shortis was on a single plank and the painter on two or three of them. People had to throw a rope to them to get them out on the stage. There was great danger of both the painter and himself being drowned, on account of the strong tide of the river there.

About the same time, three or four years ago, he was riding his pony in his father's field, and, suddenly, he stopped his horse and began to fire at a man who was working there. He fired five or six shots. The man had to run away.

About eight or nine years ago, he went to Thomas Kearney's place with a revolver. Kearney asked him if the revolver was loaded. The accused just turned round and fired at three children who were sitting on a wooden bench on the opposite side of the road, at a distance of about fifteen yards. One of them, a four year old little girl, began to cry. Her arm was marked. Kearney asked him why he did that, and he said he thought it was his (Kearney's) sister. After that he seemed sorry for it.

About two years ago the prisoner struck George Moore's dog with a cane. Moore told him: "Why did you do that, you puppy of a whelp," and Shortis fired at him with his revolver at a distance of about twelve yards. Moore was protected by a tree.

About the month of June, 1893, there were bicycle races in the park at Waterford, there was a discussion as to the best method of keeping people off the green in the centre around which the races were run. The prisoner happened to be standing by and heard what was going on. He went away hurriedly and came back in a few minutes with a brace of revolvers in his hand. He said he would keep everyone outside the track, and that he would blow the brains out of any one that attempted to come inside.

In the summer of 1893 he was in a shop with a friend. That friend reproached to him something that he had said, and qualified his act. The prisoner said to him: "If you say that again I will blow your brains out," and he took out a revolver at the same time and pointed it at him. There was a stranger in the shop at that time. He struck the prisoner with a stick and knocked the revolver out of his hand. His friend then left the shop.

In the same summer of 1893, Shortis went to the Waterford Boat Club with a rifle in his hands, and there he said to the caretaker of the club: "There is a shot, and, by God, I am going to have it." The shot, was a lady and gentleman who were about three hundred yards from where he stood. He was prevented from shooting by the caretaker of the club,

who said he would have done it if he had not prevented him from doing so.

By the evidence taken in Ireland, it is shown that he was always peculiar, boisterous and very eccentric in his ways. At times, he was very strange, and he always had foolish ideas about him. When he was young, about twelve years old, he would drive his little pony, of about three feet high, through the front door of his father's house, along the front hall, up a flight of stairs and back into the kitchen. He would drive him through the whole hall, from the front to the back, and from the back to the front. He was always very fidgety and eccentric. In conversation he would always be wandering and rambling. He was erratic in his remarks. He would talk all right a few minutes, they say, and then he would carry on some humbug. He would continually be jumping from one subject to another. He would walk into a room and pace up and down and then commence to whistle. He would run, shouting and yelling. He would laugh in the street for no reason, and when there was nobody around. He was always doing many queer, silly things. When he used to get to some sort of a fit, they would not know what to make of him. He would then do the maddest things. He would stop at a public house on the road, and he would buy beer for the horse he was driving. He had a particular way of greeting his friends. If he saw a friend, a hundred yards of him he would run after him, dash against him, and catch him round the body, and the result would be that they would both stagger along together. He would ask a young man to cut off some lumps that young man had in his throat, and offer him money to make him consent to that. He would jump from a fence or wall and throw himself on the ground as if he was throwing himself in the river to bathe. He would lie down his full length in pools of dirty water after a heavy rain, saying that he wanted to cool himself. He would ride a bicycle and lead a pony after him in tandem. He would put powder in paper, and set fire to it and throw it on the streets or in the cars to explode and frighten the people, and

he would laugh at it. He had a habit of walking upon and of jostling people upon the public thoroughfares as he passed them, out of mere recklessness and bravado. When he got punished by his father for not doing what he was told, he would cry aloud for half-an-hour and then he would say that he would kill his father and would blow his father's brains out if he had a revolver. Children would follow him in the street like a fool. People used to speak of him as *mad Shortis*, *cracked Shortis*. He had a wild, mad and reckless way of riding and driving his horse. He would ride out of his father's stable with his face turned towards the tail of the horse on which he was seated. He would ride standing on the saddle. He would ride in summer as early as four o'clock in the morning, galloping in the most violent manner and shouting wildly. He would ride his pony into shops and frighten the people, and he would laugh and clap his hands. He would ride on railway tracks at the risk of his life. He would ride after children and on people, and drive on his friends. He would drive furiously on the streets, not minding the people, shouting and yelling, calling names to others, and he would strike them with his whip. Sometimes he would drive blowing a horn. He would strike children on the street, and then he would take them to confectioners' shops and give them cakes and sweets. He would snatch the cane of his friends and break it. He would pinch his friends without cause. He would strike people on the head and drive their hats down over their eyes, or knock their hats down or take them away. He would try and throw his friends and other people from the quay into the river as a joke. He would also as a joke try and upset a boat in which he was with his friends. If he was on the quay, he would kick a dog belonging to a lady or somebody else. He would be cruel to cats and dogs. He would beat the horse he was driving savagely for no cause whatever. He would kick his own dog. He would ride his bicycle at a dog and would give the dog a swinging kick. Sometimes he would hurt the cattle with a

pitchfork and draw blood from them, and then he would laugh and clap his hands. Sometimes he would give a blow with a pitchfork to the man attending to the cattle. Sometimes he would talk quietly, and then, in ten minutes, his eyes would blaze out of his head, and no matter what he would have in his hands he would let fly at others. He always showed a great proclivity for fire arms. He had a special fad for powder and fire arms of all descriptions. He spoke of them all the time. He always carried a revolver. At his father's farm, he used to sleep with a loaded double-barrel gun in his room at the head of his bed. He would point his revolver or his gun at anybody who was with him. He would fire his revolver over people's shoulders. He would say that he always carried a revolver, because he was afraid people would get mad and attack him, or that his father had often had mad fits, and that, if he had not something to keep him quiet, he did not know what he might kill him. He would fire his revolver in the air at any time. He would fire at the quay with his revolver or his rifle, not minding the people who were around there. He would fire at steamboats running or moored. He would fire at the lighthouse. He would fire on the river in a reckless way in the direction of boathouses, not minding the people there or passing in boats. Sometimes the bullets would strike the other bank after glancing off the water. The people on the boats would stop rowing for fear of him. He would fire in the field, turning around in every direction. He would fire in the cattle-yard of his father. He would fire at the clock of the town, in doors of the houses. He would fire at the fire grate, in the hall doors and in the blinds of his father's house.

Sometimes, in public houses, he would get excited without cause, and would take out his revolver and say, "We will do away with these fellows," but when he would be reasoned with, he would desist. He often said, that a very trivial assault committed upon him would justify him in the use of fire-arms, and that he might, in fact, shoot any body that would raise his hand to him. In fact, he would fire every-

where and at everything, and he would threat to fire at everybody who contradicted him.

He had a very bad, hot, uncertain, violent and ungovernable temper, and it got worse as he grew old. He was subject to fearful fits of temper. He was never safe. Although there never was a regular case against him; there were many complaints made against him. His father is very much respected in town, and the accused was shielded a good deal for his father's sake. People refrained from giving information against him, and the constabulary authorities screened him very much out of respect for his father and mother. Sometimes he was to be prosecuted for something about carrying arms, and his mother, who is passionately fond of him, went to the county inspector and prevented it. His father is a dealer in cattle. He was trying to teach him his business, but he did not succeed. He was too unsteady. He would not be able to do any business. He could not not be depended upon. For instance, his father would send him down to ship some cattle, and, when the cattle came to be shipped, he would not be there; he would have forgotten all about it.

That is a summary of the evidence taken in Ireland. As I have told you before, perhaps you will find that evidence exaggerated through the great sympathy of the people there for the family of the accused. However, there is no doubt that it establishes very extraordinary dispositions. You will probably consider that that evidence shows that this unfortunate young man is not like all the other young men.

But does that evidence show conclusively that, at the time the prisoner did those acts in Ireland, he did not know what he was doing and that he did not know the difference between right and wrong? That is the question which you will have to consider in passing on his plea of insanity.

By the evidence taken here, it appears that the prisoner came to this country in 1893. When he arrived in Montreal he went, on the 4th of September, 1893, to the Cadillac Hotel, Notre Dame Street, Montreal, where he was intro-

duced by Mr. Morgan, the Government Cattle Inspector in Montreal. He was there three or four weeks. He was remarked there, specially in the dining-room. He would begin his meal by the bottom of the bill of fare, as by asking for pie and ice-cream, and then would ask for soup and ice-cream again, and then meat. Once he brought a basket of pears in the dining-room, put it under the table, set his feet upon the basket and took his meal.

Afterwards he went to board with James Mulcahey, who is caretaker of a building known as the Atlantic Chambers, No. 209 Commissioners Street, in Montreal. He stayed there until about the month of May following. Mulcahey and his wife say that he was very flighty ; that once he left a box of cartridges on the back of the stove ; that he used to leap three or four steps up and down the stairs, and that he had revolvers in his room. He was, nevertheless, always very polite and behaved very well.

He rented an office in that building from the proprietor, Matthews ; and he occupied it from the month of November, 1893, until the summer of 1894. Matthews says that he found him a nuisance about the building, which contains about twenty-five offices, that the tenants complained of him going in their offices and there write private letters and copy them in their letter books. One day Matthews found him in his office with knickerbockers, but without stockings and shoes on. Another day he found him walking in the hall, dressed in the same way.

One witness, Mackay, says that either in June or July, 1894, one evening, about eight o'clock, the prisoner came in the washroom of the Queen's Hotel, where the witness was, and that he took his boots off, ran the water, and put his foot, covered by the stocking, into the basin, and then took his stocking off, threw it on the floor, and put his boot on without the stocking. Mackay told him : " That is a new way of washing your hands." Thereupon the prisoner flourished a revolver at him, saying : " You have insulted me." Mackay grasped his hand, and the prisoner laughed. The revolver

was not loaded. The same evening, at about nine o'clock, the same witness saw the prisoner again flourishing a revolver on the sidewalk, in front of the Queen's Hotel, on St. James Street. Mackay grasped him again, took the revolver from him, took the cylinder out of it, and while he took the cylinder out the prisoner fell on the ground, and began roaring and jumping. That revolver also was not loaded.

One witness, Henry Malabar, night-clerk of the Queen's Hotel, also tells us that the prisoner was in the hotel in Montreal, off and on, two or three months, from June or July, 1894—boarding there a part of the time—and that he would run about, and jump, and sing, make foolish songs, shout ; and that one day he came down stairs, fell, and rolled into the middle of the hall and then laughed ; that he would run up the steps of the stairs three or four at a time, and would jump back again ; that when he was in the lavatory he would use more than one basin, and he would splash the water from one to the other ; that he also heard of the flourishing of the revolver on the street, as related by Mackay.

This evidence of Malabar and Mackay is, perhaps, extraordinary, when you will remember that Malabar says he reported the prisoner several times to the manager. The manager was heard as a witness, and also the chief clerk of the hotel, and both say that they never heard of those things, and that the prisoner never boarded at the hotel, but was only a guest of his mother for the meals when she was there, during three weeks ; and the manager swears positively that Malabar never made any report to him about the prisoner. However, the manager and the chief clerk of the hotel both say that Malabar is an honest man.

Another witness says, that when he was walking on the sidewalks in Montreal he used to spit on ladies and gentlemen he would pass or would meet, and that once, in the middle of the summer, in June, having been invited to dinner in Montreal to meet some friends, he went there with his mocassins on and his trousers tied on with a rope ; and that one day, in Alexander street, he knocked at the door of

people he did not know and asked the lady of the house for a glass of water.

On the 27th December, 1893, the mother of the prisoner sent him from Waterford, through the post-office, a money order for £3-10 sterling, equal to \$17.05 currency, and, on the 10th January, 1894, she sent him another for £1 sterling, equal to \$4.87. On the 18th day of January, 1894, he presented the money order for £1 for payment at the Post-office Money Order Department in Montreal. That department had then received the advice of the money order of £3-10. When he presented his money order of £1 the clerk in the post-office took the advice of the money order of £3-10, which he had received, and, without looking carefully at the advice he marked on the money order of £1 presented by the prisoner the sum of \$17.05, being the amount in Canadian currency of the second money order which the prisoner had not yet presented, and the clerk gave him the order to be paid that amount at the Bank of Montreal. The prisoner went to the bank and got the money, \$17.05. Later on, on the 4th day of March, 1894, he presented the money order dated of the 27th December, 1893, for £3-10, to the Montreal Post-office. The clerk not finding the advice of that money order which he had used for the money order of £1, as I have just mentioned, refused to pay it ; but, afterwards, he found that advice and ascertained that the money order of that advice had been paid. The prisoner then stated by a solemn declaration, equivalent to an oath in law, that he had not received from the Bank of Montreal the sum of \$17.05 on the 18th January, 1894, but that he had received only the sum of \$4.87, the exact amount of the money order of £1. Seeing that declaration the Postmaster then ordered that he be paid the whole amount of the second money order, \$17.05. After investigation it was ascertained by the postal authorities that the prisoner had, in fact, received in payment of the first money order of £1 the sum of \$17.05 from the Bank of Montreal, and that he had also been paid \$17.05 on the second money order, so that he had been overpaid of \$12.18,

and then they threatened him with legal proceedings if he did not refund the money. The prisoner then retracted his statutory declaration, admitted that he had received the \$17.05 on the 18th January, 1894, and, with the help of a friend, refunded the money to the Government. When he settled that, he asked the post-office employee not to mention the fact to his friend who was helping him to refund that money.

The Crown relies on that fact as establishing that the prisoner was not then an insane or an imbecile; and perhaps you will consider that if this transaction is not evidence of perfect honesty, it is evidence of a certain amount of intelligence, and perhaps you will find in his request to the Post Office employee not to mention that affair to his friend, a circumstance indicating a certain amount of knowledge of right and wrong. Otherwise, why would he be afraid that that affair should be known to his people.

At the end of June, 1894, he was taken in the office of the secretary-treasurer of the Globe Woollen Mills Company, in Montreal. He got no salary there. He was there three weeks, less two days. He seems to have done the work that was given him to be done to the satisfaction of the secretary of the Company. He started from there and left Montreal on the 21st of July, 1894, and went in the office of Mr. Simpson, general manager of the Montreal Cotton Company at Valleyfield, as his private secretary. He remained there until the 25th of August following. There he did the work to the satisfaction of Mr. Simpson, and as well as any young man of his age and inexperience could do, but, as he did not know stenography, Mr. Simpson engaged another young man who was a stenographer, and that is why he had to leave Simpson's office. He then got permission to learn the business of the Company, and worked in the mill for some time, until about the beginning of this year, without receiving any salary, and then Mr. Simpson gave orders that he should not be admitted in the mill any more because he had not followed the rules of the establishment, as he had told him to do. After that he

remained in Valleyfield, at the Windsor Hotel, where he had been boarding all the time until the day of the murder, the first of March last.

Mellie Anderson and Jack Anderson, her brother, both swear that he climbed up a post lamp in one of the streets of Valleyfield, and put out the light several times, and, once, he broke the lamp ; but the breaking of that lamp is perhaps susceptible of some explanation. That post lamp was near Anderson's house, and, of course, gave a chance to see everybody that was going there, and you remember, that Mr. Simpson had forbidden him to go to Anderson's. Perhaps, also, that that lamp was broken without any motive, as many other foolish wicked things that the prisoner did in his life. It might seem strange that he would only break that lamp near Anderson's house, if he broke it without motive ; for it is not shown that he broke any other ; but, perhaps, he broke that one because it was the one which he passed more frequently, as he would break anything else that was in his way.

Mellie Anderson says, that he used to go to her mother's house very often, and spend the evening there with her and her brother Jack ; that he used to say that he felt as if somebody was looking at him from the gallery outside of the house, that he could hear the people there outside talking and walking ; that he would not go to the window himself, because he was too much afraid, but that he would ask Jack Anderson to go and see if they were there, and he would ask them to pull the curtain, that when they had pulled the curtain, he would be quiet ; that all the time there was nobody there. Jack Anderson says about the same thing.

Now, the two Andersons are the only persons who speak of those hallucinations of the prisoner before the murder. Do you believe that they tell the truth ? You must consider that Miss Anderson was in love with him ; that she and her brother Jack knew of his plans to kill Mr. Simpson, and remained his friends ; that he wrote to Mellie immediately after the murder, telling her not to fret and asking her to send

Jack to him at once, and that Mellie wrote to him after that, that she would always be true to him.

All these are circumstances which will help you to weigh their evidence.

It is true that the medical men heard for the defence said that the prisoner, since the murder, has declared to them that he had those hallucinations ; but those declarations of the prisoner made after the murder, as I will remark to you later on, cannot be received by you as evidence of the existence of those hallucinations.

However, it is for you to say if you believe the statements of the two Andersons with regard to that.

It is proved by Mr. Simpson that he did his work, the five weeks that he was there, to his satisfaction, and that he did it as well as he could expect of a young man of his inexperience and of his age.

When he was in the mill, the master mechanic of the Company received some suggestions from him which he seems to have appreciated very much, and so did the foreman in the cardroom. Both conversed with him and discussed his suggestions, and found him as intelligent as any young man of his age.

His education seems to be pretty fair. He understands arithmetic to a certain extent, as is proved by the foreman in the cardroom of the mill at Valleyfield, and has a fair handwriting. He can write a very good letter. That is shown by his letter to Mr. Gault, to which I will refer.

In the month of January last, the prisoner was one evening at Mrs. McGuiness's—formerly Mrs. Anderson. He was in the parlour with Jack Anderson. He sent Jack Anderson for Mr. McGuiness. McGuiness came to the parlour, and then the prisoner, in the presence of Jack Anderson, asked McGuiness "How it would be if he would give Simpson a thrashing?" McGuiness said it would be all right, he supposed ; he did not care. Then the prisoner asked McGuiness, "How would it be to fill him full of cold lead?" and asked McGuiness if he would swear an *alibi*. McGuiness said, "No,

I guess not," and that he did not want to have anything to do with it. The prisoner answered, "Your conscience is not elastic enough, I suppose." Then McGuinness left him with Jack Anderson.

After that, McGuinness, who was not on good terms with Simpson, sent Joseph St. Onge to warn Simpson. On the 23rd of January last, Simpson wrote a letter to McGuinness, asking him to call at his office. The same day McGuinness called at Mr. Simpson's office and brought him three or four revolvers, one that had been found in Mellie Anderson's room, one in Jack Anderson's bed, and the other, or the two others in the house, and he told him that the prisoner wanted to kill him. Simpson sent constable Poirier to tell the prisoner to leave the place. Poirier went to the Windsor hotel, where the prisoner was boarding, and saw him there at about eleven o'clock, and told him, in the presence of Jack Anderson, that Mr. Simpson had sent him to tell him to leave the place immediately or that he would have him arrested. The prisoner asked Poirier "Why?" and Poirier said that Mr. Simpson had been informed that a ring had been arranged between him, Shortis, Mrs. McGuinness, Miss Anderson, and Jack Anderson to kill him. The prisoner said, "Who will prove that? Bob?" (meaning Mr. McGuinness.) Poirier said "Yes. Bob." Then the prisoner, turning to Jack Anderson, said, "It will be a bad affair if Bob comes a witness in that." Then he said to Poirier: "I am expecting money from my mother, and I will go. Tell Mr. Simpson that I will go and see him to-morrow morning and that I will settle that." On the 30th of January last the prisoner wrote the following letter to Mr. Gault, the president of the Montreal Cotton Mill Company, who had helped him to get something to do on his arrival in Montreal.

"Private.

" VALLEYFIELD, P.Q., Wednesday morning,

" January 30th, 1895.

"DEAR MR. GAULT,

"It was with the greatest horror and indignation that I heard last evening what kind of stories Mr. Simpson has been circulating about me, in Montreal, viz., about a conspiracy being on foot to kill him. Certainly I was told that he would use every method in his power to put me out of this town, but I never for a moment thought he would resort to a ridiculous, improbable story, about my entering into a conspiracy to kill him.

"Poirier, who was the chief of police here formerly (but, owing to habits of intemperance lost his position) told me this evening that Mr. Simpson told him to tell me "that if I did not leave the town, he would have to put me in jail for conspiring to take his life." The reason Mr. S. is so anxious to get me to leave is, he hates Miss M. G. Anderson and her brother, because their mother, now Mrs. McGuinness, and him are very bad friends, and on the 24th, or thereabouts, of last month, he told me I should not speak to Miss Anderson or her brother in the future, because he made up his mind that none of his friends or any person in the mill should have anything to do with them. Is not that as great a piece of high handed boycotting as ever you heard about? I certainly think by such conduct Mr. S. displayed an awful amount of petty spite, to say the least of it. I would not insult any friend of mine by behaving in such an unmannerly way, and notice the result; first I am told I must leave the mill, and then a trumped up charge is brought against me. In Canada such a story cannot fail to be ridiculous. Are you not astonished, Mr. Gault, at any man doing such things as Mr. S. to vex a person whom he dislikes? Rather hard on the person that he selects to use as the punishing medium. Will you please tell me what to do? Here I am all alone without one to advise me. I shall see this morning Mr. S. and will tell him that he shall have my answer within a week.

Such nonsensical thoughts as my prowling around the mill waiting to kill any person. I am too young to right away decide my conduct, but pray to our good God that you will tell me what you think best for me to do, and in the meantime tell Mr. S. to stay proceedings for a week. You have been formerly so kind to me that I feel that you advise me in my hour of trouble. If I will be permitted to stay here, I expect to get a position in the office of one of the lumber mills here. Should I be forced to go away what am I to do? Goodness only knows. Should you like to hear an impartial account of my conduct whilst here, I feel confident that you will receive a good report about me if you write to anyone who knows me. There are more ways than one, you know, to tell every story. Won't you please try and get an impartial one before you judge me? Thanking you from the bottom of my heart in anticipation for your advice, and former kindness: also hoping you will forgive my giving you so much trouble.

"I remain,

"Dear Mr. Gault,

"Very gratefully your friend,

(Signed) "F. V. C. SHORTIS."

It is for you to consider and say whether this letter, written on the 30th of January last, one month before the murder, is the letter of a natural imbecile or of an insane; whether that letter was written by a man who did not know the difference between right and wrong. When he asked McGuinness to prove an *alibi*, do you believe that he knew that, in killing Simpson, he would break the law and expose himself to punishment? When he said to McGuinness that he supposed his conscience was not elastic enough, do you believe that he knew that swearing an *alibi* would be wrong and against conscience? Do you believe that what he said to Jack Anderson in the presence of Poirier, that it would be a bad affair if Bob came witness in that, indicates that he knew that the plan he had made to kill Simpson was

a bad affair? Do you believe that the letter to Mr. Gault, at the same time that it shows the education of the prisoner, shows also that he knew and understood that the killing of Simpson would be wrong? That is for you to say.

But, gentlemen of the jury, apart from his general conduct at home, in Ireland, and here, we will have to examine, and you will have to consider specially his conduct at the time of the killing and immediately after; for you have to decide whether at the time of the killing he was capable of appreciating the nature and quality of his act and of knowing that such act was wrong.

You will have first to examine whether the prisoner had a motive in killing Loye. If you find that he had, as a motive, the acquiring of the big sum of money which was in the office, or any part of that sum, probably you will consider that that motive goes far to rebut the evidence of insanity resulting from the act given in evidence; and if you find that he had no motive, you will perhaps have less difficulty in arriving at the conclusion than the murder was the outcome of insanity; although the absence of a motive is not in itself evidence of insanity, and the evidence of a motive is not necessary to convict a murderer.

The prisoner was under the impression that it was an easy thing to rob the office. He said that twice to young McVicar, one of his friends. It is true that Miss Anderson contradicts McVicar on one point. McVicar says that the prisoner told him that twice, once in coming from Anderson's house, about six weeks before the first of March, and the other time in going there about two weeks after; and Miss Anderson says that McVicar never went to her house after the first day of January last. But, perhaps the evidence of Miss Anderson has not the same weight as that of McVicar, for the reasons which I have mentioned to you before. You have heard the last evidence of McVicar, and I think you will agree with me that the evidence of McVicar is true, and I see nothing to prevent you from believing McVicar when he tells you that the prisoner told him that twice.

I have just reminded you of what he said to McVicar, You will also remember that two weeks before the murder, on the Friday evening, he went to the office when the money had just been locked up in the safe, and the clerks were going out, and that he knew that the clerks of the Company were in that evening, of the first of March, preparing the money to pay the men.

You will also remember that he began to fire on those men, just when the money was being put in the vault, and before it was locked in out of his reach.

Are all those circumstances, which tend to show that the prisoner was aiming at the money, purely accidental? He did not want that money for his support. He must have known that his mother would have sent him enough for that. Did he want that money to marry Mellie Anderson? They were in love, but there is no evidence that they intended to be married. However, it is for you to say whether he had a motive and whether that motive, if he had any, was that sum of money.

It is true that his parents are rich, but his father sent him here evidently with the view to correct him, and although they would not let him suffer, still they did not want him to have more money than that was required for his support. I do not mean by this remark to convey to you the idea that he wanted that money to support himself. No. It seems to me that the accused had good reason to believe, as I just told you, that his mother would pay his board and support him ; but you must examine all those facts.

You will, gentlemen, consider whether when the prisoner killed Loye he had the intention of stealing that sum of fourteen thousand dollars which was lying there, and if you find in your conscience that it was his object, that opinion will undoubtedly help you to decide the question of insanity.

The prisoner went armed to the office. He had a four-chamber revolver loaded. It is true that he used to carry revolvers in Ireland, and that he used to do so here, but he had also a big strong chisel under his coat. That chisel was

found on him after the murder. It did not belong to the mill, so you may assume, I suppose, that he took it with him. If the revolver is to be credited to his habit to carry revolvers, the chisel is not. But it is said that you cannot suppose that he went there to kill, because he had only a small revolver of four chambers, and with that he could not kill five persons. That has to be considered ; but it is not sure that he expected to find five persons in the office. If he had not found a better revolver there, which he had oiled and prepared, perhaps he would not have attacked those men that evening. When he attacked those men he had in his hands and on him revolvers and cartridges enough to kill twenty men.

On coming to the office he saw Lowe's revolver on the table, and he asked permission to oil it and put it in order. If he was a sane man, we would ask him, "Why were you so kind as to oil and put in order Lowe's revolver? Was it to be sure that the revolver would fire well when you would use it against those very parties who received you so friendly and so kindly?"

Before he shot Wilson the first time, why did he place himself in the middle of the office—just opposite Wilson and quite near to Loye—where he could shoot them both without changing place, leaving the two others in a position that they could not escape without passing him? Is it by mere accident, or did he put himself there so as to kill the four of them with more facility?

Before shooting at Loye, he told Lowe not to move or that he would shoot him. Does that show intelligence?

After Lowe was in the vault with Lebœuf, the prisoner did his best to open it ; and when Lowe asked him where was Loye, he lied to him, and told him he did not know—that he was somewhere in the mill. He lied again to induce Lowe to come out of the vault, when he told him that Wilson wanted help, and asked for God's sake to come out and help him.

When he heard Maxime Lebœuf, he asked him what was the matter. Did he want to know if he had been discovered,

and if anybody else knew of the shooting. When Lebœuf told him there was nothing, he killed him. Did he kill him only when he was sure that nobody else knew it? Why did he carry Maxime Lebœuf's body out of the way?

After having killed Loye and Lebœuf, after having tried to induce, without success, Lowe and Arthur Lebœuf to come out of the vault, he went to Wilson and fired at him when he was on the floor, to make sure that he would be dead. Afterwards, he went again after Wilson, but he could not find him, although he called him for God's sake.

When Lowe asked him from the vault to go away, he went to the door, opened it and slammed it to make Lowe believe that he had gone, and then he went back on tip-toes. Would that indicate to you that he did not know what he was doing?

When he was caught and arrested by Dr. Sutherland and Napoleon Delisle he had had time to reflect. He had begun shooting at about eleven o'clock, and it was nearly two o'clock when he was arrested. He handed the revolver and delivered himself up, saying then that *he did not know why he killed those men*. Did he deliver himself up because he saw that two men were coming from outside and that he had been discovered, and, perhaps, he saw that they were armed and determined, because it is not sure that there was no light where they were standing, and, perhaps, he had seen them coming? Or did he deliver himself up because he did not know that he had committed a crime?

Why did he say to Smith immediately after he was arrested, and when Smith asked him if it was he who had done that: "*Shoot me, or lend me your revolver and I will shoot myself*." Why did he ask to be shot, or did he want to shoot himself, if he did not know that he had done wrong?

Gentlemen, these are the circumstances which you have to weigh in your conscience, because they are the circumstances of the murder, and you will have to take those circumstances specially in consideration, as you have to decide whether at the time he knew what he was doing and that what he was

doing was wrong. Did he know then what he was doing? Did he know that he was doing wrong?

The accused said to Dr. Charles K. Clarke and to Doctor Anglin that the first shot on Wilson was accidental; that he was pointing the pistol in that foolish way he had, that the pistol went off, and that the idea at once flashed on him: "Mr. Simpson will now have his opportunity for revenge." After that he says he remembers nothing except cleaning a lamp chimney.

Now, gentlemen, probably you will believe in that impulse, if you believe that at the time the prisoner was insane to such an extent as not to know what he was doing, or that he was doing wrong; but, if you do not believe that at the time the prisoner was insane to such an extent, well of course, then you will not take that impulse in consideration. A man may have an uncontrollable insane impulse if he is insane, but if he is not insane he cannot have an insane impulse; and you must remember that generally speaking no man becomes insane for a few moments to accomplish a specific act or to commit a crime. Insanity is a disease, and however sudden the invasion may be, it has to go through its course of symptoms and terminate like any other disease. Otherwise, a man might kill another and then put in a plea of temporary insanity of which he would have immediately recovered. Temporary insanity should not be used to shield criminals from receiving the just deserts of their crime. On the other hand, the defence says that the fact that the prisoner when he knew that Lowe and Arthur Lebcœuf were in the vault and would not come out, and that Wilson had escaped him, and he was then sure to be discovered, did not try to run away and prevent his arrest, shows that, at the time, he did not appreciate the nature and quality of his act. Indeed, the fact that he did not try to escape, seems rather extraordinary.

You will have to weigh that circumstance, gentlemen.

Another fact which seems very extraordinary is the letter he sent to Miss Anderson. Do you believe that a sane man

who knew what he was doing, would think of writing such a letter? Unless, perhaps, Millie Anderson and Jack Anderson knew beforehand his intentions.

It is also said that immediatly after he was put in the cell, at Valleyfield, he slept. You will have to consider whether that is proved or not. Miron says that he put him in the cell, and that he laid down on a wooden bench in the cell, and that during half an hour or three-quarters of an hour that he watched at the door of the cell, he heard him breathe, and that when he went in the cell with Leduc, he found him lying on the bench, that he put his hand on him and that he got up at once, and that he thought he was sleeping, but that he does not know. Leduc, the chief of police of Valleyfield, says that when he went in the cell with Miron, the accused was lying on the bench, in the attitude of of a man who sleeps, but that he cannot swear that he was sleeping. Both were under the impression that he was sleeping. If he slept, surely that is very extraordinary. Did he sleep from exhaustion, or did he sleep because he was indifferent to what he had done, because he did not appreciate the acts he had just committed. However, it is for you to decide whether he slept or not, and to appreciate that circumstance if he did.

Now, is that evidence which has been read to you or which has been taken before you sufficient to establish that the prisoner at the time of the killing was labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his act and of knowing that such act was wrong?

Perhaps you will consider that this evidence shows that the mind of the prisoner is not perfectly sane, that that unhappy man does not seem to be like the others. But our law does not require that a man be perfectly sane to make him responsible for his acts.

To amount to a complete bar of punishment, the insanity at the time of committing the offence must have been of such a kind as entirely to deprive the prisoner of the use of his

reason as applied to the act in question, and of the knowledge that he was doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong and to know that he was doing wrong in the act which he committed, he is liable to the full punishment of his criminal acts.

You must consider all those facts, and say in your conscience if they prove conclusively that the prisoner was at the time an insane or an imbecile. I say conclusively, because the defence of insanity must be clearly made out. It is not every idle or frantic humour of a man, or something unaccountable in his actions, which will show him to be such a madman as to exempt him from punishment; but where a man does not know what he is doing he will be properly exempt from punishment. The complete possession of reason is not necessary in order to render a man answerable for his acts; it is sufficient if he can discriminate between good and evil.

The prisoner, acknowledging his obligation to prove his insanity or imbecility at the time of the murder, brought as witnesses four medical men conversant with the disease of insanity, who had never seen him before the murder, but who had visited him several times since the murder and during the trial, and who were present during the whole trial and the reading of the evidence taken under the Commission and the examination of the witnesses, and they were asked their opinion as to the state of the prisoner's mind at the time that the acts related in the evidence took place, and assuming those acts to be true, and also their opinion whether the prisoner was conscious at the time of the murder that he was doing wrong.

The medical men who have been heard as experts on the part of the Defence are the following: Dr. James V. Anglin, of Montreal, a gentleman of nine years' experience in insane asylums; Dr. Charles R. Clarke, of Kingston, superintendent of the Rockwood Asylum for the Insane at Kingston, and professor of mental disease at the Queen's University at

Kingston, a gentleman who has been connected with insane asylums for over twenty years ; Dr. Daniel Clarke, of Toronto, superintendent of the Toronto Asylum for the insane, since nearly twenty years ; and Dr. Bucke, of London, Ontario, superintendent of the London Lunatic Asylum, and professor of mental disease at the Western University in London, a gentleman having also an experience with the lunatics of about twenty years. All those gentlemen, who are men of great ability and great learning, and who would not like to commit themselves lightly, give as their opinion that the prisoner is a natural imbecile and insane ; that, at the time of the murder, he was not capable of appreciating the nature and quality of that murder, and that he did not know then that he was doing wrong.

We have seen before that it is a general rule that no person shall be excused from punishment for disobedience to the laws of the country unless he be expressly defined and exempted by the laws themselves. We have also seen that imbecility and disease of the mind or insanity proper are excuses acknowledged by our laws. I have told you what is imbecility and insanity. The medical men heard as witnesses, experts, swear that at the time of the murder the prisoner was labouring under both. It is true that those men base partly their opinion on the examination which they made of the prisoner since the murder and on the declarations made to them by him, which they say they believe to be true. The insanity or imbecility must be proved by acts previous or contemporaneous to the murder. However, the medical men heard by the Defence have told us, that, taking only the acts of the prisoner, previous and contemporaneous to the murder, which were related by the evidence as true, they are still of opinion that at the time of the murder, he was an insane and an imbecile to such an extent that he could not appreciate the nature and quality of his acts, and that he did not know the difference between right and wrong.

That evidence of those experts must be weighed by you, and you must give it your consideration, for you have to

appreciate it as you have to appreciate, yourselves, the evidence as to the acts of the prisoner, which those experts have themselves appreciated. But you must not take into consideration the acts of the prisoner subsequent to the murder, which are related by the doctors ; so that you will not consider, as evidence, the declarations that the prisoner made to them after the murder, that he heard voices during the night, and people talk. Those declarations made by the prisoner after the murder, of hallucinations, which he pretended to have, are not legal evidence.

As I have already told you, you must give to the opinion of those medical men your consideration, but at the same time, you must remember that they were required to speak not to facts, but to *opinions*. Their opinion is worthy of your consideration, but it is only an opinion which you must consider and weigh with the facts proved, according to the dictates of common sense and of your conscience.

The law says, that the prisoner to be excused must prove that he was, at the time, labouring under natural imbecility or disease of the mind to such an extent as rendered him incapable of appreciating the nature and quality of his act, and of knowing that such act was wrong. That means, that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. If the accused, at the time of the killing, was conscious that the act was one which he ought not to do, he is punishable.

It is for the jury to determine whether the prisoner, when he committed the offence with which he stands charged, was capable of distinguishing between right and wrong. Provided they should be of opinion that when he committed the offence he was capable of distinguishing right from wrong, he would be answerable to the justice of the country, and guilty in the eye of the law.

In order to support a defence of insanity, it ought to be proved by the most distinct and unquestionable evidence that the prisoner was incapable of distinguishing between right and wrong. In fact, it must be proved beyond all doubts that at the time he committed the act he did not consider that murder was a crime against the laws of God and nature, and there is no other proof of insanity which would excuse murder or any other crime.

I lay it down to you as the law that if the prisoner who committed the offence, if the prisoner who killed Loye knew right from wrong, and that he was doing wrong, he must be brought in guilty, whether insane or not. If insane, he is not necessarily exempted from the punishment of his crime. The question is, whether he was at the time capable of committing a crime, and that must be determined by evidence of the absence, not of insanity, but of a knowledge of right and wrong. Was his insanity of such a kind as to render him irresponsible by destroying his knowledge of right and wrong?

You must base your verdict on the question of insanity on the acts of the prisoner previous and contemporaneous to the murder. You will decide whether all those acts that you consider as proved and well established, are acts that could not have been made by anybody else but an imbecile or an insane. If you come to the conclusion that an insane man alone or an imbecile alone could have done all the acts that have been proved by the Defence, then you will say that the prisoner is an insane or an imbecile. But, to decide that question, you must not take the opinion of the witnesses as to his imbecility or his insanity, except, however, the opinion of the medical men who have been heard as experts, which you are not bound to follow, but which you must consider. Those other witnesses are not in a better position than you to appreciate the acts which have been proved, and your verdict must be the result of your own opinion, appreciating those acts and appreciating also the opinion of the medical men.

So that you will not take into consideration the declara-

tions of the witnesses that they considered him as a fool, but you will have to say whether the acts proved could be nothing else but the outcome of insanity or imbecility.

If you come to the conclusion that those acts that you will consider as proved, are the acts of an insane or an imbecile, that will help you to come to the conclusion that at the time of the murder the prisoner was an insane or an imbecile ; for the question is whether he was an insane or an imbecile or not at the time of the murder to the extent I have mentioned before.

You will then take in your most earnest consideration all the acts of the prisoner previous to the murder, together with his conduct in the murder itself, and say whether at the time of the murder he was an insane or an imbecile to such an extent that he did not know what he was doing, and that what he was doing was wrong.

The law does not oblige the jurors to account for the means by which they are convinced ; it does not prescribe to them rules of which the abundance and sufficiency of the evidence must depend ; it prescribes to them to interrogate themselves in silence and meditation, and to find out in the sincerity of their conscience what impression the evidence brought against the accused and his grounds of defence have made on their reason. The law does not say to them : you shall hold as true such fact as shall be attested by such and such number of witnesses ; neither does it say to them : you shall not consider as sufficiently established any evidence formed by such documents, by so many witnesses and by so many presumptions ; it puts to them that only question which includes the whole measure of their duties : Have you an intimate conviction.

Have you an intimate conviction that, at the time of the murder, the prisoner at the Bar was insane and did not know that he was committing a murder, and that in committing it he was doing wrong, then you will say that he is not guilty, but if you have an intimate conviction that at that time he was not so insane as not to understand that he was committing

a murder and to know that he was doing wrong, then you will say that he is guilty.

It is within your province to say, it is your duty to say whether the prisoner, at the time that he killed Loye, had enough intelligence to know that he was committing a murder and that in killing Loye he was doing wrong.

Gentlemen, it has been represented to you, with a great deal of force and ability, that the prisoner at the bar is the only son of most respectable people, occupying a most enviable position in their country, and that both the father and the mother, and specially the mother, have done all they could for his moral and intellectual education, and it has been hinted that, taking into consideration the inappreciable sorrow and grief of the prisoner's good mother, you would lean to clemency.

On the other side it has been said that you must not lose sight of those that have been killed, and that the hearts of those near to them have also been broken by this horrible crime.

Gentlemen, it is my duty to tell you that you cannot take those good feelings into consideration. I am sure your hearts have bled when you have witnessed here the overwhelming grief and inexpressible anxiety of the prisoner's mother. At the beginning of this trial you have heard the Clerk of the Crown here tell you that, for his trial, the prisoner has put himself into the hands of God and of his country, which you represent. You would be untrue to God—in the presence of whom you have sworn to give an impartial verdict; you would be untrue to your country, whose justice you are administering to-day; you would be untrue to your oath, and you would be unworthy of the name of honest men, if you rendered a verdict for any other consideration than for the firm purpose, and the only purpose, of doing justice to the prisoner according to his due.

Gentlemen, I appreciate the difficulty of your position. You would be happy—we would all be happy—to return this unhappy boy to the good-will of the Lieutenant-Governor and

to the love of his mother, if before God, who sees the secrets of your hearts, you believe that he did not know what he was doing, and that he was doing wrong ; but you must not do it if you believe that he is guilty of a wilful and conscious murder.

Gentlemen, you will have to answer the three following questions :

1st. Did the accused, Francis Valentine Cuthbert Shortis, murder John Loye on the first day of March last (1895)?

2nd. Was the accused, at the time of the murder, labouring under natural imbecility or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of his act, the said murder, and of knowing that such act or murder was wrong?

3rd. Is the accused guilty or not guilty?

If you are of opinion that the accused murdered John Loye or killed him by an illegal act, as I have no doubt that you will come to that conclusion, as the evidence is clear on that point, you will answer *yes* to the first question.

If you are of opinion that the accused has proved that at the time of the murder he was labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his act and of knowing that such act was wrong, you will answer *yes* to the second question. If, on the contrary, you are of opinion that he has not proved that, at the time of the murder, he was labouring under natural imbecility and disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of his act, and of knowing that such act was wrong, you will answer *no* to that second question.

If you answer *yes* to the first question, and if you answer *no* to the second question, then you will answer *guilty* to the third question ; but if you answer *yes* to the first question, and if you answer *yes* to the second question, then you will answer to the third question *not guilty ; he is acquitted on account of insanity*.

Gentlemen, before leaving the case into your hands, I must tell you that you are bound to follow the direction of the Court on the questions of law, but that, on the question of fact as to the murder and as to the insanity, you are the absolute and the only judges. On the question of culpability, you are bound to follow no other opinion than your own. In fact, you are bound to decide according to your own conscience and not according to the conscience of anybody else, not even the President of the Court, whether the prisoner at the Bar is guilty or not guilty.

Gentlemen, I now leave the case in your hands, convinced that you are honest men, and that you will decide and render a true verdict between Our Sovereign Lady the Queen and the prisoner at the Bar.

28th Day of Trial—November 4th, 1895.

MR. MACMASTER, Q.C., OF COUNSEL FOR THE CROWN.—
I now beg to move for sentence of the Court on the prisoner at the Bar.

THE CLERK OF THE CROWN.—Prisoner, you are indicted, tried, and convicted, for the murder of John Loye on the 1st day of March, 1895. Have you anything to offer why sentence of death should not be pronounced against you according to law. If you have, you must offer it now, and you shall be heard.

PRISONER.—No, thank you.

BY HIS HONOUR JUDGE MATHIEU.—Francis Valentine Cuthbert Shortis, you have been accused of having murdered John Loye on the 1st of March last; to that accusation you have pleaded that you were not guilty: your ground of defence was that at the time you murdered Loye you were labouring under natural imbecility and disease of mind to such an extent as to render you incapable of appreciating the nature and quality of that act, and of knowing that such act was wrong. Twelve honest men have been sworn to try your case, and after a month's close attention and reflection, and after you have been most ably defended by able, eminent and learned Counsel, they have returned a verdict of "guilty," declaring thereby that your plea of insanity has not been proven.

It is now over eight months since you have killed Loye. It has taken eight months for the justice of the country to declare in your case that he who commits murder shall be punished. Still, the jurors have paused and reflected a long time before bringing to you the just reward of your most atrocious crime. The law says that he who commits murder shall, after conviction, be sentenced to death. It is with

deepest sorrow that I am obliged to-day to pronounce the sentence of the law. A father will easily understand the blow that this sentence will give to your father, and a son who had also a good mother will share to a certain extent the grief that cannot be expressed of your good mother, even when he is bound to be the instrument of the inexorable justice that must punish and cannot forgive. I am bound to-day to pronounce the sentence which the law pronounces in your case.

The sentence of the Court of Our Sovereign Lady the Queen, sitting now here, is, that you, Francis Valentine Cuthbert Shortis, be taken to the common jail of this district of Beauharnois, and there kept in custody until the third day of January next, at eight o'clock in the morning, when you will be taken from the said common jail and conducted to the place of execution, and there you shall be hanged by the neck until you are dead, and may God have mercy on your soul.

BY THE PRISONER.—I wish to thank you, my Lord, for the kindness and consideration you have shown to me, and all the people connected with this honourable Court have given me whilst I have been here.

The following gentlemen formed the Jury in this case :—

CHARLES McHARDY,
JOSEPH DAOUST,
THEO. BOURDON,
REGIS. CARDINAL,
ALEXANDER WATSON,
WILLIAM FEENEY,
CHARLES DEMERS,
A. A. SMAILL,
GEORGE LIGGIT,
PIERRE BOYER,
THEOPHILE DORÉ,
JOHN CUNNINGHAM.



